

## CHAPTER 1050

S.B. No. 396

## AN ACT

relating to the organization and regulation of state savings banks; providing penalties.

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

SECTION 1. The Texas Savings Bank Act is enacted to read as follows:

## CHAPTER 1. GENERAL PROVISIONS

Sec. 1.01. SHORT TITLE. This Act may be cited as the "Texas Savings Bank Act."

Sec. 1.02. PURPOSE. The purpose of this Act is to facilitate the delivery of credit for home ownership and family and community purposes, increase the savings base of the state, and provide local control of the means of finance and the accumulation of capital through the state chartering of depository institutions known as savings banks, and to provide savings bank regulation that is readily responsive to changes in local economic conditions.

Sec. 1.03. DEFINITIONS. In this Act:

(1) "Administrative procedure act" means the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(2) "Appropriate banking agency"

(A) means:

(i) with respect to a Texas-chartered savings bank, the Savings and Loan Department of Texas;

(ii) with respect to a federal savings bank, the Office of Thrift Supervision;

(iii) with respect to a Texas-chartered savings and loan association, the Savings and Loan Department of Texas;

(iv) with respect to a federal savings and loan association, the Office of Thrift Supervision;

(v) with respect to a Texas-chartered bank, The Banking Department of Texas; and

(vi) with respect to a national bank, the Office of the Comptroller of the Currency; and

(B) includes:

(i) in all cases where a state bank is a member of the Federal Reserve System, the board of governors of the Federal Reserve System;

(ii) in all cases where required by the Federal Deposit Insurance Act (12 U.S.C. Section 1811 et seq.), the Federal Deposit Insurance Corporation; and

(iii) in all cases, the successors of the state and federal agencies specified in this subdivision.

(3) "Capital stock" means, with respect to a capital stock savings bank, the units into which the proprietary interest in the savings bank is divided.

(4) "Capital stock savings bank" means a savings bank authorized to issue capital stock.

(5) "Commissioner" means the Savings and Loan Commissioner.

(6) "Company" means a corporation, partnership, trust, joint-stock company, association, unincorporated organization, or other legal entity, or a combination of any of those entities acting in concert.

(7) "Control" means the possession of the power to direct or cause the direction of the management and policies of a savings bank by either direct or indirect means. An individual or company is deemed to have control if, individually or acting in concert with others, the individual or company directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing 25 percent or more of the voting stock or voting rights of a savings bank.

(8) "Deposit account" means a savings account, certificate of deposit, withdrawable deposit, demand deposit account, checking account, or any other appropriate term referring to the amount of money a savings bank owes to an account holder as a result of the deposit of funds in the savings bank.

(9) "Deposit liability" means the aggregate amount of money owed to deposit account holders of a savings bank at any one particular time, as shown by the books of the savings bank and after applying any legal or contractual reductions.

(10) "Domestic savings bank" means a savings bank organized under the laws of this state and subject to this Act.

(11) "Earnings on account" means either interest contractually payable or dividends declared payable to holders of deposit accounts in a savings bank.

(12) "Federal Deposit Insurance Corporation" includes its successor or successors.

(13) "Federal savings bank" means a savings bank incorporated under the laws of the United States whose principal business office is located in this state.

(14) "Finance commission" means The Finance Commission of Texas.

(15) "Financial institution" means a state or federal savings bank, a state or federal savings and loan association, or a state or national bank.

(16) "Foreign savings bank" means a savings bank whose principal office is located outside this state and that has been organized under the laws of a state or territory of the United States other than this state or under the laws of the United States.

(17) "Holding company" means any company that directly or indirectly controls a savings bank or controls any other company that is a savings bank holding company.

(18) "Loss reserves" means the aggregate amount of the reserves allocated by a savings bank for the sole purpose of absorbing losses.

(19) "Member" means, with respect to a mutual savings bank, a person holding an account with the savings bank, assuming or obligated on a loan in which the savings bank has an interest, or owning property that secures a loan in which the savings bank has an interest.

(20) "Mutual savings bank" means a savings bank not authorized to issue capital stock.

(21) "Regulatory capital" means a common stockholders' equity, including retained earnings, noncumulative perpetual preferred stock and related earnings, minority interests in the equity accounts of fully consolidated subsidiaries, and other elements as established by the rules of the commissioner and the finance commission.

(22) "Savings bank" means an institution organized under or subject to this Act.

(23) "Stockholder" means the owner of one or more shares of a savings bank's capital stock.

(24) "Subsidiary" means a company that is controlled by a savings bank or by a company that is controlled, directly or indirectly, by a savings bank. For purposes of this subdivision, a savings bank is considered to control a company if the savings bank directly or indirectly or acting in concert with one or more other individuals or entities or through one or more subsidiaries:

(A) owns, controls, or holds with the power to vote, or holds proxies representing, more than 25 percent of the voting stock or voting rights of the company;

(B) controls in any manner the election of a majority of the directors of the company; or

(C) is a general partner in or has contributed more than 25 percent of the equity capital of the company.

(25) "Surplus" means the aggregate amount of the undistributed earnings of a savings bank held as undivided profits or unallocated reserves for general corporate purposes and any paid-in surplus held by the savings bank.

(26) "Surviving financial institution" means the entity that is the result of a merger or consolidation of a foreign savings bank and a domestic savings bank or of a merger or consolidation of a savings bank and another financial institution.

(27) "Unpursued cause of action" means an existing claim belonging to a savings bank on which a suit or other effective action has not been filed or taken by or on behalf of the savings bank before the expiration of six months after the cause of action arose, involving:

(A) a claim for monetary damages or recovery of property;

(B) a claim for equitable relief;

(C) a cause of action for breach of contract or for enforcement of a contract; or

(D) a claim on a fidelity bond.

(28) "Unsafe and unsound practices" means, with respect to the operation of a savings bank, an action or inaction that is likely to cause insolvency or substantial dissipation of assets or earnings or to otherwise reduce the ability of the savings bank to timely satisfy withdrawal requests of deposit account holders.

(29) "Withdrawal value of deposit account" means the net amount of money, after the application of any legal or contractual reduction, that may be withdrawn at any particular time by an account holder from a deposit account.

Sec. 1.04. EFFECT OF HEADINGS. The division of this Act into chapters and sections and the captions of chapters and sections are for convenience and have no legal effect in construing the provisions of this Act.

## CHAPTER 2. INCORPORATION AND ORGANIZATION

Sec. 2.01. APPLICATION OF LAWS RELATING TO GENERAL BUSINESS CORPORATIONS. The Texas Business Corporation Act, the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), and other law relating to general business corporations are applicable to a savings bank to the extent not inconsistent with this Act or the proper business of a savings bank.

Sec. 2.02. FEDERAL INSURANCE OF DEPOSIT ACCOUNTS REQUIRED. A savings bank must obtain and maintain federal insurance of deposit accounts through an insurance corporation created by an Act of the United States Congress.

Sec. 2.03. STATUS AS INTERNAL REVENUE SERVICE THRIFT INSTITUTION. A savings bank must qualify for and maintain the asset test of Section 7701(a)(19) of the Internal Revenue Code of 1986 (26 U.S.C. Section 7701(a)(19)).

Sec. 2.04. INCORPORATION AND INITIAL CAPITAL. A savings bank may be organized on the application of five or more adult residents of this state. The minimum initial capital of a savings bank shall be fixed by rules adopted by the commissioner and the finance commission, but the amount may not be less than the amount required to obtain insurance of deposit accounts by the Federal Deposit Insurance Corporation or the amount required of

national banks, whichever is greater. The initial capital shall be paid in cash before the savings bank may begin business.

Sec. 2.05. CONTENTS OF APPLICATION. (a) An application to incorporate a savings bank must be in a form specified by the commissioner, signed by each incorporator, and submitted to the commissioner with the filing fee. An application consists of:

(1) two copies of the proposed articles of incorporation setting forth the name of the savings bank, the site of the principal office, and the names and addresses of the initial directors;

(2) two copies of the bylaws under which the savings bank proposes to operate;

(3) statements, exhibits, maps, and other data sufficiently detailed and comprehensive to enable the commissioner to make findings under Section 2.11 of this Act;

(4) other information relating to the proposed savings bank and its operation required by the rules of the commissioner and the finance commission; and

(5) financial information about the applicants, incorporators, directors, or stockholders required by the rules of the commissioner and the finance commission.

(b) Financial information submitted under Subsection (a) of this section is confidential and not subject to public disclosure unless the commissioner finds that the disclosure is necessary and in the public interest.

(c) If an application is to incorporate a capital stock savings bank, the articles of incorporation must set out:

(1) the aggregate number of shares of common stock that the savings bank may issue;

(2) the par value of each share or a statement that the shares are without par value;

(3) a statement of whether the savings bank may issue preferred stock;

(4) the amount of stock that has been subscribed and will be paid for before the savings bank begins business; and

(5) a separate statement of the name and address of each subscriber, the amount subscribed by each subscriber, and the amount of paid-in surplus with which the savings bank will begin business.

(d) If an application is to incorporate a mutual savings bank, the articles of incorporation must include a statement of the amount of deposit liability of the savings bank and the amount of the expense fund with which the savings bank will begin business.

(e) The bylaws of the proposed savings bank must provide for the voting rights of the members, if a mutual savings bank, or the stockholders, if a capital stock savings bank.

(f) The articles of incorporation and statements of fact submitted to the commissioner in connection with an application must be subscribed and sworn to before an officer authorized to administer oaths.

Sec. 2.06. MANAGING OFFICER. An applicant is not required to specify the name and qualifications of the proposed managing officer of the proposed savings bank at a hearing concerning the granting of the application or in a public record. This information may be presented to the commissioner at any time, but a savings bank may not begin business unless it first presents to the commissioner the name and qualifications of its proposed managing officer and that managing officer is approved as qualified by the commissioner.

Sec. 2.07. COMMON STOCK. (a) Before approving an application, the commissioner shall require that a capital stock savings bank have an aggregate amount of capital in the form of stock and paid-in surplus as specified by the rules of the commissioner and of the finance commission. Paid-in surplus may be used instead of earnings to pay organizational and operating expenses and earnings on deposit accounts and to meet any loss reserve requirements. If the application is not approved or if the proposed savings bank does not begin business, the stock subscriptions for capital stock, less any lawful expenditures, shall be returned pro rata to the subscribers.

(b) A savings bank may not purchase, directly or indirectly, any of its own shares of common stock after the stock is issued. Common stock may not be retired or redeemed until all liabilities of the savings bank have been satisfied in full, including all amounts due to

holders of deposit accounts, unless prior written permission is obtained from the commissioner and the retirement or redemption is authorized by a majority vote of the savings bank's stockholders at an annual meeting or a special meeting called for that purpose. The basis of the retirement or redemption must be first approved by the commissioner and consent must be obtained in writing from the Federal Deposit Insurance Corporation and filed with the commissioner. Preferred stock may be retired or redeemed in the manner provided by the articles of incorporation or a resolution of the board of directors of the savings bank establishing the rights and preferences relating to the stock. Both common and preferred stock must be fully paid for in cash in advance of issuance. A savings bank may not make a loan against the shares of its outstanding common or preferred stock.

Sec. 2.08. **PREFERRED STOCK.** (a) If the articles of incorporation permit, shares of preferred stock may be divided into and issued in series. Each series must be clearly designated to distinguish its shares from the shares of other series or classes. All or part of a series and variations in the relative rights and preferences between different series may be fixed and determined by the articles of incorporation, but all shares of the same class must be identical except for the following rights and preferences:

- (1) the rate of dividend;
- (2) the price, terms, and conditions at which shares may be redeemed;
- (3) the amount payable on shares in the event of involuntary liquidation;
- (4) the amount payable on shares in the event of voluntary liquidation;
- (5) a sinking fund provision for the redemption or purchase of shares;
- (6) the terms and conditions of conversion of shares that may be converted; and
- (7) voting rights.

(b) If the articles of incorporation permit, the board of directors by resolution may divide classes of preferred stock into series and, within the limitations provided by this chapter and the articles of incorporation, may determine the relative rights and preferences of the shares of the series. Before the shares may be issued, a copy of the resolution shall be submitted to the commissioner. If the resolution conforms to this Act, the commissioner shall file it in the commissioner's office. A resolution filed by the commissioner is considered to be an amendment to the savings bank's articles of incorporation.

(c) The extent to which preferred stock may be included as regulatory capital of a savings bank is subject to the rules adopted by the commissioner and the finance commission.

Sec. 2.09. **EXPENSE FUND REQUIREMENTS FOR PROPOSED MUTUAL SAVINGS BANK.** Before approving the articles of incorporation of a mutual savings bank, the commissioner shall require the savings bank to have subscriptions for an aggregate amount of deposit accounts and an expense fund in an aggregate amount established by rule of the commissioner and the finance commission as necessary for the successful operation of a mutual savings bank. The expense of organizing a savings bank, its operating expenses, and earnings on accounts declared and paid or credited to its deposit account holders may be paid out of the expense fund until the savings bank's earnings are sufficient to pay those amounts. The amounts contributed to the expense fund do not constitute a liability of the savings bank except as provided by this chapter. The contributions may be repaid pro rata to the contributors from the net earnings of a savings bank after provision for required loss reserve allocations and payment or credit of earnings declared on accounts. If a savings bank is liquidated before contributions to the expense fund are repaid, any contributions to the expense fund remaining unspent after the payment of expenses of liquidation, creditors, and the withdrawal value of deposit accounts shall be paid to the contributors pro rata. The books of a savings bank must reflect the expense fund. Contributors to an expense fund shall be paid dividends on the amounts contributed to the same extent a deposit account is paid dividends, and for this purpose the contributions are considered deposit accounts of the savings bank.

Sec. 2.10. **HEARING ON APPLICATION TO INCORPORATE.** (a) When a complete application to incorporate as defined by rules adopted by the commissioner and the finance commission is filed, the commissioner shall issue public notice of the application and shall give

any interested party an opportunity to appear, present evidence, and be heard for or against the application. A hearing officer designated by the commissioner shall hold the hearing.

(b) The hearing officer shall file with the commissioner a report on the hearing containing findings of fact on each condition set out by Section 2.11 of this Act and the evidence on which those findings are based.

**Sec. 2.11. APPROVAL OR DENIAL OF APPLICATION TO INCORPORATE.** (a) The commissioner may not approve an application to incorporate unless:

(1) the prerequisites to incorporation required by this chapter have been satisfied;

(2) the character, responsibility, and general fitness of the persons named in the articles of incorporation command confidence and warrant belief that the business of the proposed savings bank will be honestly and efficiently conducted in accordance with the intent and purpose of this Act and that the proposed savings bank will have qualified full-time management;

(3) there is a public need for the proposed savings bank and the volume of business in the community in which the proposed savings bank will conduct its business indicates that a profitable operation is probable; and

(4) the operation of the proposed savings bank will not unduly harm any existing savings bank or state or federal savings and loan association.

(b) If the commissioner makes each finding under Subsection (a) of this section, the commissioner shall enter an order approving the application and stating the findings required by Subsection (a) of this section, issue under official seal a certificate of incorporation, and deliver a copy of the approved articles of incorporation and bylaws to the incorporators. The commissioner shall retain a copy of the articles of incorporation and bylaws as a permanent file. On delivery of the certificate to the incorporators, the savings bank is a corporate body with perpetual existence unless terminated by law and may exercise the powers of a savings bank beginning on the date the commissioner certifies receipt of satisfactory proof that the required amount of capital was received by the savings bank, free of encumbrance.

(c) If the commissioner is unable to make all findings required under Subsection (a) of this section, the commissioner shall enter a written order denying the application and stating the grounds for the denial. A copy of the order shall be delivered to the designated representative of the incorporators by certified mail.

**Sec. 2.12. DISSOLUTION OF SAVINGS BANK FOR FAILURE TO BEGIN BUSINESS.** A savings bank shall begin business not later than the first anniversary of the date of the approval of its application. The incorporators may request from the commissioner an extension of the deadline. If good cause is shown, the commissioner may grant a reasonable extension of the deadline. Failure to begin business as required by this Act is a ground for rescission of a savings bank's charter by the commissioner.

**Sec. 2.13. CORPORATE NAME.** The name of a savings bank must include the words "State Savings Bank" or the abbreviation "SSB." These words or the abbreviation must be preceded by an appropriate descriptive word or words approved by the commissioner. The commissioner may not approve the incorporation of a savings bank having the same name as another financial institution authorized to do business in this state under this Act, the Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), or The Texas Banking Code (Article 342-101 et seq., Vernon's Texas Civil Statutes) or a name so nearly resembling the name of another financial institution as to be calculated to deceive unless the savings bank is formed by the reincorporation, reorganization, or consolidation of the other financial institution or on the sale of the property or franchise of the other savings bank. A person or company, either domestic or foreign, other than a state or federal savings bank, may not do business under a name or title that contains the words "savings bank," that indicates or reasonably implies that the business is the character or kind of business carried on or transacted by a savings bank, or that is calculated to lead any person to believe that its business is that of a savings bank. On application by the commissioner or any savings bank, a court of competent jurisdiction may issue an injunction to restrain a person or company from violating this section.

**Sec. 2.14. ESTABLISHMENT OF ADDITIONAL OFFICES; CHANGE OF OFFICE LOCATION OR NAME.** Without the prior approval of the commissioner given in accor-

dance with the rules of the commissioner and the finance commission, a savings bank may not establish an office other than the principal office stated in its articles of incorporation, move an office from its immediate vicinity, or change its name. The commissioner may permit a savings bank to establish additional offices within this state or any other state or territory of the United States in accordance with the rules of the commissioner and the finance commission. If requested, the commissioner shall give a person who might be affected by the establishment of additional offices or the change of office location or name an opportunity to be heard under Section 12.08 of this Act.

### CHAPTER 3. CORPORATE CHANGES

Sec. 3.01. CONVERSION INTO STATE-CHARTERED SAVINGS BANK. (a) A financial institution may be converted into a savings bank under this Act on a majority vote of the members or stockholders of the financial institution cast at an annual meeting or a special meeting called to consider the action. Copies of the minutes of the proceedings of the meeting of members or stockholders, verified by affidavit of the secretary or an assistant secretary, must be submitted to the commissioner and mailed to the appropriate banking agency within 10 days after the date of the meeting. A sworn copy of the proceedings of the meeting is presumptive evidence of the holding and action of the meeting after its filing with the commissioner. At a meeting to vote on a conversion to a domestic savings bank, the members or stockholders shall also vote on the directors of the savings bank. The proposed directors shall execute two copies of an application for certificate of incorporation as provided in Chapter 2 of this Act. Each proposed director shall sign and acknowledge the application for certificate of incorporation as a subscriber to the savings bank and shall sign and acknowledge the proposed bylaws as an incorporator of the savings bank.

(b) The commissioner on receipt of the application and verified copy of the minutes shall conduct an examination of the financial institution seeking conversion. Following the examination, the commissioner shall approve the conversion without a hearing if the commissioner determines that the converting financial institution is in sound condition and meets all standards, conditions, and requirements of Chapter 2 of this Act or relevant rules adopted by the commissioner and the finance commission. On approval of the conversion, the incorporators shall insert a paragraph preceding the testimonium clause in the certificate of incorporation stating that the savings bank is incorporated by conversion from another financial institution.

(c) An applicant is entitled to a hearing under the administrative procedure act if the commissioner denies an application to convert and a written request for a hearing is delivered to the commissioner within 10 days after the date of denial. A hearing officer designated by the commissioner shall hold the hearing. Within 30 days after the date the hearing is completed, the commissioner shall enter a final order either approving or denying the application. An applicant has the right to appeal a final order to a district court of Travis County with the commissioner named as defendant. The commissioner is not required to file an appeal bond in any cause arising under this section. Filing an appeal under this section does not stay an order of the commissioner.

(d) On the conversion of a financial institution into a savings bank, the corporate existence of the financial institution does not terminate, but the new savings bank is a continuation of the entity of the converting financial institution. All property of the converting financial institution, including its rights, titles, and interests in and to all property of whatever kind, whether real, personal, or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, or pertaining to the financial institution, or which would inure to it, immediately by operation of law and without any conveyance or transfer and without any further act or deed remains and vests in and continues to be the property of the savings bank into which the financial institution converted. The new savings bank has, holds, and enjoys those properties, rights, privileges, interests, and assets in its own right as fully and to the same extent as they were possessed, held, and enjoyed by the converting financial institution. The new savings bank as of the time the conversion takes effect has and succeeds to all the rights, obligations, and relations of the converting financial institution. The new savings bank shall file a copy of the order of conversion in all counties in which the converting financial institution owns real property. All

pending actions and other judicial proceedings to which the financial institution is a party are not abated or discontinued by reason of the conversion, but may be prosecuted to final judgment, order, or decree in the same manner as if the conversion into the new savings bank did not occur. The new savings bank may continue any pending action in its corporate name as the new savings bank, and any judgment, order, or decree may be rendered for or against it that might have been rendered for or against the converting financial institution previously involved in the judicial proceedings.

**Sec. 3.02. CONVERSION INTO FINANCIAL INSTITUTION.** (a) The finance commission shall adopt rules establishing the conditions under which a savings bank subject to this Act may be converted into another financial institution. The rules must ensure that a proposed conversion does not cause undue harm to the public interest or to any other existing financial institution.

(b) A conversion by a savings bank may be initiated by the adoption of a resolution by a majority vote of the members or stockholders of a savings bank entitled to vote at an annual meeting or special meeting called to consider the conversion. The resolution must declare that the savings bank shall be converted. A copy of the minutes of the proceedings of the meeting of the stockholders or members, verified by affidavit of the secretary or an assistant secretary, must be filed in the office of the commissioner within 10 days after the date of the meeting. A sworn copy of the proceedings of the meeting is presumptive evidence of the holding and action of the meeting after its filing with the commissioner.

(c) Within 10 days after the date of receipt of an application to convert and a copy of the minutes, the commissioner shall either consent to the conversion by written order or set a hearing to consider whether the proposed conversion complies with the conditions established by the finance commission. The hearing must be held within 25 days after the date of the filing of the conversion application unless a later date is agreed to by the savings bank and the commissioner. The commissioner or a hearing officer designated by the commissioner shall conduct the hearing as a contested case in compliance with the administrative procedure act, except that a proposal for decision may not be made and a final decision or order must be rendered by the commissioner within 15 days after the date of the close of the hearing. If the commissioner denies an application to convert, the administrative procedure act governs a motion for rehearing and available judicial review.

(d) If the commissioner consents to the conversion, the savings bank, within three months after the date of the commissioner's written order, shall consummate the conversion in the manner prescribed and authorized by the applicable laws of this state or the United States. A copy of the charter issued to the new financial institution by the appropriate banking agency or the certificate showing the organization of the new financial institution, certified by the secretary or assistant secretary of the appropriate banking agency, must be filed with the commissioner. Failure to file the charter or certificate with the commissioner does not affect the validity of the conversion.

(e) On the grant of a charter by the appropriate banking agency, the savings bank receiving the new charter ceases existence as a savings bank incorporated under this Act and is not subject to the supervision and control of the commissioner under this Act.

(f) On the conversion of a savings bank into another financial institution, the corporate existence of the savings bank does not terminate, but the new financial institution is a continuation of the entity of the converting savings bank. The new financial institution retains all property, rights, and obligations of the converting savings bank and is subject to the provisions of Subsection (d) of Section 3.01 of this Act as if it were a new savings bank under that section to the extent the provisions can be made applicable to the new financial institution.

**Sec. 3.03. REORGANIZATION, MERGER, AND CONSOLIDATION.** (a) Under a plan adopted by the board of directors and approved by the commissioner and subject to Chapter 11 of this Act and Article XVI, Section 16, of the Texas Constitution, a savings bank may reorganize, merge, or consolidate with another financial institution if the plan of reorganization, merger, or consolidation is approved by a majority of the total votes that the members or stockholders are entitled to cast. Approval may be voted at either an annual meeting or at a special meeting called to consider the action. A stockholder of a capital stock savings bank has the same dissenter's rights as a stockholder of a domestic corporation under the Texas



Business Corporation Act. In all cases the corporate continuity of the resulting corporation possesses the same property rights and obligations as those of a savings bank that has converted in accordance with this Act. The home office of the financial institution in the proposed merger possessing the largest assets shall be designated as the home office of the surviving financial institution unless a different home office is approved by the commissioner.

(b) On receiving a plan of reorganization, merger, or consolidation, the commissioner shall give public notice of the proposed reorganization, merger, or consolidation in the county or counties in which the financial institutions participating in the proposed plan have offices and shall give any interested party an opportunity to appear, present evidence, and be heard for or against the proposed plan. A hearing officer designated by the commissioner shall hold the hearing. If a protest is not received on or before the date of hearing, the commissioner or hearing officer may dispense with the hearing. The provisions of the administrative procedure act applicable to a contested case apply to the hearing, except that the notice and hearing provisions of that Act and of this section do not apply to an application under this section if the commissioner has designated the merger to be a supervisory merger under the rules adopted by the finance commission, and in that event, the application and all information relating to the application is confidential and privileged from public disclosure.

(c) The commissioner shall issue an order denying the proposed plan if:

(1) the reorganization, merger, or consolidation would substantially lessen competition or be in restraint of trade and would result in a monopoly or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the financial industry in any part of the state, unless the anticompetitive effects of the proposed reorganization, merger, or consolidation are clearly outweighed in the public interest by the probable effect of the reorganization, merger, or consolidation in meeting the convenience and needs of the community to be served;

(2) the proposed plan is not in the best interest of the financial institutions that are parties to the plan;

(3) the experience, ability, standing, competence, trustworthiness, or integrity of the management of the financial institutions proposing the plan is such that the reorganization, merger, or consolidation would not be in the best interest of the financial institutions that are parties to the plan;

(4) after reorganization, merger, or consolidation the surviving financial institution would not:

(A) be solvent;

(B) have adequate capital structure; or

(C) be in compliance with the laws of this state;

(5) the financial institutions proposing the plan have not furnished all of the information pertinent to the application reasonably requested by the commissioner; or

(6) the financial institutions proposing the plan are not acting in good faith.

(d) If the surviving financial institution is an entity other than a savings bank, the commissioner may accept the procedures and decision of the appropriate banking agency having jurisdiction over the surviving financial institution in addition to or in lieu of the requirements of this section.

Sec. 3.04. MERGER OF SUBSIDIARY CORPORATION INTO SAVINGS BANK. (a) One or more corporations organized under the law of this state may merge into a savings bank that owns all of the corporations' capital stock under a plan of merger adopted by majority votes of the boards of directors of the savings bank and each corporation.

(b) The original and a copy of the articles of merger must be submitted to the secretary of state and the commissioner. The articles of merger must be executed by the president or vice-president and a secretary or assistant secretary of the savings bank and each corporation and must include:

(1) the names of the savings bank and each corporation;

(2) a copy of the resolutions of the savings bank and each corporation adopting the plan of merger;

(3) a statement of the number of shares of each class issued or authorized by each corporation;

(4) a statement that all capital stock of each corporation is owned by the savings bank; and

(5) a statement incorporating the provisions of Subsection (f) of this section.

(c) For a merger to be effective, it must be approved by both the secretary of state and the commissioner. If the secretary of state determines that the articles of merger comply with applicable law and that all fees and franchise taxes due from the corporation have been paid, the secretary of state shall approve the articles of merger as provided by Subsection (d) of this section. If the commissioner determines that the articles of merger comply with applicable law and that the merger is in the best interest of the savings bank, the commissioner shall approve the articles of merger as provided by Subsection (d) of this section.

(d) On approval of the articles of merger, the commissioner and the secretary of state shall each:

(1) endorse "filed" and the date of the approval on the original and a copy of the articles of merger;

(2) file the original and a copy of the articles of merger in the records of the commissioner's office or the secretary of state's office, as appropriate; and

(3) issue and deliver to the savings bank a certificate of merger, attaching a copy of the articles of merger.

(e) A merger takes effect when the latter of the required certificates of merger is issued.

(f) After a merger, the merged corporation ceases to exist as a separate entity, and only the savings bank survives. The savings bank assumes the rights and obligations of the corporation and owns the property of the corporation. The articles of incorporation of the savings bank are considered amended to the extent that a change is stated in the plan of merger.

(g) Section 3.03 of this Act does not apply to a merger under this section.

**Sec. 3.05. VOLUNTARY LIQUIDATION.** At an annual meeting or a special meeting called for that purpose, a savings bank by majority vote of its members or stockholders may resolve to liquidate and dissolve the savings bank. Before a liquidation resolution may take effect, a copy of the resolution, certified by the president and secretary of the savings bank, together with an itemized statement of the savings bank's assets and liabilities sworn to by a majority of its board of directors, must be filed with and approved by the commissioner. After the commissioner's approval of the resolution, the savings bank may not accept any additional deposit accounts or additions to deposit accounts or make any additional loans, and all its income and receipts in excess of actual expenses of liquidation of the savings bank must be applied to the discharge of its liabilities. The board of directors of the savings bank, under the supervision of the commissioner and in accordance with a plan of liquidation approved by the commissioner, shall then liquidate the affairs of the savings bank and reduce its assets to cash for the purpose of paying, satisfying, and discharging all existing liabilities and obligations of the savings bank, including the full withdrawal value of all deposit accounts, with the balance remaining, if any, to be distributed to the members or stockholders of record on the date of adoption by the savings bank of the resolution to liquidate, according to their liquidation rights. All expenses incurred by the commissioner or any of the commissioner's representatives during the course of liquidation shall be paid from the assets of the savings bank. On completion of liquidation, the board of directors shall file with the commissioner a final report and accounting of the liquidation. An approval of the report by the commissioner operates as a complete and final discharge of the board of directors and each member in connection with the liquidation of the savings bank.

**Sec. 3.06. INTERIM CHARTER.** (a) For the purposes of this section:

(1) "Reorganizing institution" means a financial institution the commissioner considers to be in an unsafe condition.

(2) "Merged institution" means an existing financial institution that is merged into an acquiring savings bank.

(b) Application may be made to the commissioner to incorporate a savings bank for the purpose of purchasing the assets, assuming the liabilities other than liability to stockholders, and continuing the business of a reorganizing institution or for the purpose of acquiring by merger a merged institution.

(c) An application must include information required by the commissioner or by a rule of the commissioner and the finance commission. The capitalization of the savings bank must be in an amount determined by the commissioner as sufficient to carry out the purposes for which incorporation is requested.

(d) The administrative procedure act does not apply to an application to reorganize or merge a financial institution the commissioner considers to be in an unsafe condition. The application and all information relating to the application are confidential and privileged from public disclosure.

(e) If the commissioner finds that the business of a reorganizing or merged institution can be effectively continued under the proposed articles of incorporation and that the proposed reorganization or merger is in the best interest of the savers, depositors, creditors, and stockholders, if any, of the reorganizing institution or the merged institution and the public in general, the commissioner shall state those findings in writing and issue a certificate of incorporation. On issuance of the certificate, the savings bank is a corporate body and a continuation of the reorganizing or merged institution, subject to all the reorganizing or merged institution's liabilities, obligations, duties, and relations. The savings bank may exercise the powers of a savings bank under the laws of this state.

(f) In the case of an acquisition merger, a stockholder of a capital stock financial institution has the same dissenter's rights that a stockholder in a domestic business corporation has under the Texas Business Corporation Act.

(g) Subsection (c) of Section 3.03 of this Act does not apply to an application under this section if the commissioner considers the institution to be reorganized or merged to be in an unsafe condition, and the commissioner may approve the reorganization or merger if the commissioner finds from the application and all information submitted with it that the proposed reorganization or merger is in the best interest of the savers, depositors, creditors, and stockholders, if any, of the reorganizing or merged institution and the public.

Sec. 3.07. CHANGE OF CONTROL. (a) A change in the control of a savings bank may not occur unless an application for approval of the change of control is filed with and approved by the commissioner.

(b) The application must be on a form prescribed by the commissioner and must be made under oath. Except to the extent expressly waived by the commissioner, the application must contain:

(1) the identity, personal and corporate history, as applicable, business background and experience, and financial condition of each person or company by whom or on whose behalf the acquisition is to be made, including a description of the managerial resources and future prospects of each acquiring party and a description of any material pending legal or administrative proceedings to which the applicant is a party;

(2) the terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(3) the identity, source, and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of those funds or other consideration was or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and arrangements, agreements, or understandings with those parties;

(4) any plans or proposals that an acquiring party making the acquisition may have to liquidate the savings bank, sell its assets, merge it with any company, or make any other major changes in its business, corporate structure, or management;

(5) the terms and conditions of any offer, invitation agreement, or arrangement under which any voting security of the savings bank will be acquired and any contract affecting that security or its financing after it is acquired;

(6) information establishing that the requirements under Subsection (d) of this section are satisfied; and

(7) other information that the commissioner:

(A) by rule requires; or

(B) orders to be included in a particular application.

(c) The applicant shall pay a filing fee when the applicant files an application. A proposal to acquire voting securities of a savings bank subject to this section may be made by an individual, two or more individuals acting in concert, any type of partnership, corporation, syndicate, trust, or any other organization, or any combination of those individuals or entities. The information required by the commissioner may be required of each member of the group, as directed by the commissioner. Notice of the application, its date of filing, and the identity of all parties to the application shall be submitted to the Texas Register by the commissioner on receipt of the application for publication in the next issue of the Texas Register following the date the information is received. Information obtained by the commissioner under this section, other than published information, is confidential and may not be disclosed by the commissioner or any officer or employee of the Savings and Loan Department of Texas, except nothing in this section prohibits the commissioner from disclosing, on request, the identity of the actual or beneficial owner of any savings bank chartered under this Act. The commissioner, in the commissioner's discretion and if the commissioner deems it necessary or proper in the enforcement of the laws of any state or the United States and in the best interest of the public, may also divulge information to any appropriate banking agency or any appropriate governmental department, agency, or instrumentality of this state, another state, or the United States.

(d) The commissioner, subject to Subsections (e) and (f) of this section, shall issue an order denying an application unless the commissioner determines that the applicant has established that:

(1) the acquisition would not:

(A) substantially lessen competition;

(B) in any manner be in restraint of trade that would result in a monopoly; and

(C) be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the financial industry in any part of the state;

(2) the financial condition of any acquiring party does not jeopardize the financial stability of the savings bank being acquired;

(3) plans or proposals to liquidate or sell the savings bank or its assets, if any, are in the best interest of the savings bank;

(4) the experience, ability, standing, competence, trustworthiness, or integrity of the applicant is such that the acquisition would be in the best interest of the savings bank; and

(5) the savings bank would be solvent, have adequate capital structure, and be in compliance with the laws of this state after the acquisition.

(e) Notwithstanding Subdivision (1) of Subsection (d) of this section, the commissioner is not required to deny an application if the commissioner determines that:

(1) the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served; and

(2) the proposed acquisition is not in violation of any law of this state or the United States.

(f) The commissioner shall issue an order denying an application if the commissioner determines that the applicant:

(1) has failed to furnish all information pertinent to the application reasonably requested by the commissioner; or

(2) is not acting in good faith.

(g) When the commissioner determines that an application for approval of change of control is complete, the commissioner shall issue public notice of the application and shall give

any interested party an opportunity to appear, present evidence, and be heard for or against the application. A hearing officer designated by the commissioner shall hold the hearing. A hearing is not required if no party provides written notice to the commissioner, within 10 days of the date of publication of the notice of application, of intention to appear and present evidence at the hearing and if the commissioner finds that the application complies with all statutory requirements for approval within 30 days after the date of the completion of a hearing, the commissioner shall enter a final order either approving or denying the application. An applicant may appeal a final order to a district court of Travis County with the commissioner as defendant. Either party to the action may appeal from the district court of Travis County to the appellate court having jurisdiction of the cause. The appeal is at once returnable to the appellate court having jurisdiction of the cause, and that action has precedence in that appellate court over all causes of a different character pending in that court. The commissioner is not required to give any appeal bond in any cause arising under this section. Filing an appeal under this section does not stay an order of the commissioner.

(h) This section does not apply to a conversion, reorganization, merger, consolidation, or voluntary liquidation under this chapter.

(i) This section does not excuse or diminish the notice provisions required elsewhere in this Act.

(j) This section may not be construed to prevent the commissioner from investigating, commenting on, or seeking to enjoin or set aside any transfer of voting securities of a savings bank, whether or not the transfer is subject to this section, if the commissioner deems the transfer to be against the public interest.

(k) If it appears to the commissioner that a person committed or is about to commit a violation of this section or a rule or order of the commissioner adopted under this section, the attorney general on behalf of the commissioner may apply to a district court of Travis County for an order prohibiting the violation and for other equitable relief as the case may require.

(l) A person commits an offense if the person wilfully and knowingly makes a materially false or misleading statement to the commissioner with respect to the information required by this section. An offense under this subsection is a Class A misdemeanor. This subsection is cumulative of other remedies contained in this section.

(m) When it appears a change in control may have occurred without prior approval, the commissioner may call a hearing to determine whether there was in fact a change in control, whether unauthorized persons or corporations having no apparent ownership interest in the savings bank, acting alone or in concert with others, effectively have indirect controlling or dominating influence over the management or policies of a savings bank, and whether an order requiring divestiture of unapproved or indirect control or other appropriate supervisory order should be issued.

#### CHAPTER 4. SUPERVISION AND REGULATION

Sec. 4.01. REGULATORY AUTHORITY. The Savings and Loan Department of Texas and the commissioner shall regulate savings banks and subsidiary corporations of savings banks operating under this Act and shall enforce this Act.

Sec. 4.02. ANNUAL INDEPENDENT AUDIT REQUIRED. Each savings bank shall obtain within 90 days after the date of the close of each of its fiscal years an audit by an independent accounting firm that is a member of the American Institute of Certified Public Accountants or its successor. Copies of the audit together with all correspondence reasonably related to the audit shall be provided to the commissioner. The commissioner and the finance commission may adopt rules as necessary to implement this section.

Sec. 4.03. INTEREST IN SAVINGS BANKS PROHIBITED. (a) Neither a savings bank nor a director, officer, employee, or representative of a savings bank may grant or give a loan or gratuity, directly or indirectly, to the commissioner, an employee of the Savings and Loan Department of Texas, or a spouse of the commissioner or an employee.

(b) The commissioner or an employee of the Savings and Loan Department of Texas may not:

(1) hold an office or position in any domestic savings bank or exercise any right to vote on any domestic savings bank matter by reason of being a member or stockholder of the savings bank;

(2) hold an interest, directly or indirectly, in any domestic savings bank; or

(3) undertake any indebtedness as a borrower, directly or indirectly, or endorser, surety, or guarantor or sell or otherwise dispose of any loan or investment to any domestic savings bank.

(c) Notwithstanding Subsection (b) of this section, the commissioner or an employee of the Savings and Loan Department of Texas may hold a deposit account at a savings bank and receive earnings on the account.

(d) If the commissioner or an employee of the Savings and Loan Department of Texas has any prohibited, direct or indirect right or interest in a domestic savings bank at the time of the individual's appointment or employment, the commissioner or employee shall dispose of the right or interest within 60 days after the date of appointment or employment. If the commissioner or an employee of the Savings and Loan Department of Texas is indebted as a borrower, directly or indirectly, or is an endorser, surety, or guarantor on a note to a domestic savings bank at the time of appointment or employment, the commissioner or employee may continue in that capacity until that debt is paid.

(e) If a loan or other note of the commissioner or an employee of the Savings and Loan Department of Texas is acquired by a savings bank, the commissioner or employee may continue as a borrower, endorser, surety, or guarantor of the loan or note until the loan or note is paid.

Sec. 4.04. RULES. The commissioner and the finance commission may adopt rules not inconsistent with this Act necessary for the supervision and regulation of savings banks and for the protection of the public investing in savings banks, including but not limited to rules on:

(1) the minimum amounts of capital required to incorporate and operate as a savings bank, but not less than the amounts required of corresponding national banks;

(2) the fees and procedures for processing, hearing, and deciding applications filed with the commissioner or the Savings and Loan Department of Texas under this Act;

(3) the books and records that a savings bank shall keep and the location at which the books and records shall be maintained;

(4) the accounting principles and practices that a savings bank shall observe;

(5) the conditions under which records may be copied or reproduced for permanent storage before the originals are destroyed;

(6) the form, content, and time of publication of statements of condition and the form and content of annual reports and other reports that are to be prepared and published or filed by a savings bank;

(7) the manner by which assets, liabilities, and transactions in general are to be described on the books of a savings bank, so that each entry will be an accurate description of the subject matter of the entry;

(8) the conditions under which the commissioner may require assets to be charged off or reserves established by transfer from surplus or paid-in capital due to depreciation or overstatement of value;

(9) the powers of a savings bank to make loans and investments, containing provisions reasonably necessary to ensure that loans made by a savings bank are consistent with sound lending practices and that the savings bank's investment will promote the purposes of this Act, including provisions governing:

(A) the type of loans and the conditions under which a savings bank may originate, make, or sell loans;

(B) the conditions under which a savings bank may purchase or participate in loans made by other lenders;

(C) the conditions for the servicing of loans for other lenders;

(D) the conditions under which a savings bank may lend money on the security of loans made by others;

(E) the conditions under which a savings bank may pledge loans held by it as collateral for borrowings by the savings bank;

(F) the conditions under which savings banks may invest in securities and debt instruments;

(G) the documentation that a savings bank must have in its files at the time of funding or purchase of a loan, an investment, or a participation in a loan;

(H) the form and content of statements of expenses and fees and other charges that are paid by borrowers or that borrowers are obligated to pay;

(I) title information that must be maintained;

(J) borrower's insurance coverage of property securing loans;

(K) appraisal reports;

(L) financial statements of borrowers;

(M) the fees or other compensation that may be paid to an officer, director, employee, affiliated person, consultant, or any third party in connection with the procuring of any loan for a savings bank;

(N) the conditions under which the savings bank may advance funds to pay taxes, assessments, insurance premiums, and other similar charges for the protection of its interest in property securing its loans;

(O) the terms and conditions under which a savings bank may acquire and deal in real property;

(P) the valuation on a savings bank's books of real property held by it;

(Q) the terms and conditions governing the investment by a savings bank in subsidiary corporations, the powers that may be exercised by subsidiaries, and the activities that may be engaged in by subsidiaries; and

(R) other matters considered necessary to administer properly each type of transaction;

(10) change of control of a savings bank;

(11) conduct, management, and operation of savings banks;

(12) withdrawable accounts, bonuses, plans, and contracts for savings programs;

(13) mergers, consolidations, reorganizations, conversions, and liquidations;

(14) establishment of additional offices and change of office location or name;

(15) holding companies, including requirements for registration and periodic reporting of a holding company with the commissioner and transactions between a holding company, any affiliate of a holding company, or a savings bank; and

(16) limitations on loans to one borrower, but not less restrictive limitations than those imposed on a savings association under Subsection (u) of Section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. Section 1464(u)).

Sec. 4.05. **PROHIBITED TRANSACTIONS.** A savings bank or subsidiary corporation of a savings bank may not engage in any transaction in violation of a rule adopted under this Act.

Sec. 4.06. **EXAMINATIONS.** (a) The commissioner shall periodically examine the affairs of each savings bank and its subsidiaries and the transactions of any holding company related to the holding company's savings bank subsidiaries.

(b) The commissioner, a deputy commissioner, or an examiner or auditor of the commissioner shall have free access to all books and records of a savings bank, subsidiary corporation, or holding company and to books and records relating to a savings bank's business kept by an officer, agent, or employee of a savings bank, subsidiary corporation, or holding company. The commissioner, deputy commissioner, examiner, or auditor may subpoena witnesses and administer oaths or affirmations in examination of the directors, officers, agents, or employees of a savings bank, subsidiary corporation, or holding company

or any other person in relation to the savings bank's affairs, transactions, and condition and may require and compel by subpoena the production of records, books, papers, contracts, or other documents. On a witness's failure to obey a subpoena or refusal to appear or answer in connection with an examination, the commissioner may apply to a district court of Travis County for an order requiring obedience of the subpoena or testimony of the witness. The court shall issue the order if it finds that good cause exists for issuing the subpoena or taking the testimony. Failure to obey a court order may be punished as contempt of court.

(c) An examination may be performed in conjunction with an examination by the Federal Deposit Insurance Corporation or any other federal depository institutions regulatory agency having jurisdiction over a savings bank. The commissioner may accept an examination made by an appropriate banking agency in lieu of an examination under this section.

(d) The commissioner, at the savings bank's cost, may perform an extra or additional examination or audit or devote extraordinary attention to the affairs of a savings bank if the commissioner determines the conditions of the savings bank justify the examination, audit, or extraordinary attention.

(e) Promptly on completion of a report, a copy of the examination or audit report shall be furnished to the savings bank examined or audited.

Sec. 4.07. FEES. The commissioner and the finance commission, acting under the rulemaking power delegated by Article 5, Chapter II, The Texas Banking Code (Article 342-205, Vernon's Texas Civil Statutes), and Section 4.04 of this Act, shall establish the amount of the fees to be charged by the commissioner for supervision and examination of savings banks, for filing an application or other documents, for conducting a hearing, and for other services performed by the commissioner and the commission's office and the time and manner of payment of the fees. Fees collected by the commissioner shall be deposited and used in accordance with Section (h), Article 5, Chapter II, The Texas Banking Code (Article 342-205, Vernon's Texas Civil Statutes).

Sec. 4.08. CONFIDENTIALITY. The commissioner and any examiner, supervisor, conservator, liquidator, inspector, deputy, assistant clerk, or other employee of the Savings and Loan Department of Texas appointed or acting under this Act shall keep confidential any facts or information regarding a savings bank obtained in the course of an examination or by reason of the individual's official position, unless the public duty of the person requires otherwise. A person who violates this section or wilfully makes a false official report on the condition of a savings bank shall be removed from office or further employment with the Savings and Loan Department of Texas. A report of an examination made to the commissioner is confidential and not for public record or inspection, except that the commissioner for good reason may make the report public. This section does not prevent the proper exchange of information relating to savings banks and the business of savings banks with the representatives of regulatory authorities of other states or to any other department, agency, or instrumentality of this state, another state, or the United States if the commissioner determines the disclosure necessary or proper for the enforcement of the laws of this state, another state, or the United States. Unless otherwise provided by this Act, this section does not apply to facts, information, or reports of investigations obtained or made by the commissioner or the commissioner's staff in connection with an application for charter or a hearing held by the commissioner under this Act, and those facts, information, or reports may be included in the record of the appropriate hearing. The commissioner shall report promptly to the finance commission when a supervisory order is issued under Chapter 5 of this Act. The commissioner shall furnish information about a savings bank or person as the finance commission may require in executive session, and all information discussed in the executive session is confidential.

Sec. 4.09. ANNUAL STATEMENTS AND REPORTS. Each savings bank shall prepare and publish in January of each year in a newspaper of general circulation in the county in which the home office of the savings bank is located a statement of its financial condition as of the last business day of December of the preceding year. The statement must be in the form prescribed or approved by the commissioner. On or before the last day of January in each year, a savings bank shall make a written report to the commissioner, on a form to be prescribed and furnished by the commissioner, of its affairs and operations, including a complete statement of its financial condition with a statement of income and expenses since



its last annual report under this section. The president, vice-president, or secretary of the savings bank shall sign the report. Each savings bank shall also make other reports as the commissioner may require from time to time in the form and filed on the dates as the commissioner prescribes and signed in the same manner as the annual report.

## CHAPTER 5. ENFORCEMENT

Sec. 5.01. **GROUNDS FOR SUPERVISORY INTERVENTION.** The commissioner may intervene in the affairs of a savings bank if:

(1) the savings bank, a director, officer, agent, or other person participating in the conduct of the affairs of the savings bank, a subsidiary of the savings bank, or a holding company of the savings bank:

(A) is engaging in, has engaged in, or is about to engage in an unsafe and unsound practice in conducting the affairs of the savings bank;

(B) is engaging in, has engaged in, or is about to engage in a violation of the articles of incorporation or bylaws of the savings bank;

(C) is engaging in, has engaged in, or is about to engage in a violation of any law, rule, or supervisory order applicable to the savings bank or a violation of any condition that the commissioner or the finance commission has imposed on the savings bank by written order, directive, or agreement; or

(D) has filed materially false or misleading information in a filing required under Section 3.07 of this Act;

(2) a director, officer, employee, agent, or other person participating in the conduct of the affairs of the savings bank, a subsidiary of the savings bank, or a holding company of the savings bank committed or is about to commit:

(A) a fraudulent or criminal act in the conduct of the savings bank, subsidiary, or holding company's affairs that may cause the savings bank or subsidiary to become insolvent or be in danger of insolvency or another act that threatens immediate or irreparable harm to the general public or the savings bank, its deposit account holders or creditors, or the subsidiary;

(B) a breach of fiduciary duty causing or probably causing the savings bank or subsidiary to suffer substantial financial losses or other damages, or a breach of fiduciary duty that would seriously prejudice the interest of the holders of deposit accounts or other security issued by the savings bank;

(C) a breach of an order or instruction of the commissioner or a conservator or supervisor in charge of the savings bank's affairs;

(D) a refusal to submit to interrogation under oath by the commissioner or the commissioner's agent with respect to the affairs of the savings bank; or

(E) a material alteration, concealment, removal, or falsification of books or records of the savings bank, a subsidiary, or a holding company;

(3) the savings bank is insolvent, in imminent danger of insolvency, or engaged in or is about to engage in making loans or investments and the market value of the investments or the value of the security for the loans is materially overstated; or

(4) the savings bank failed to maintain proper books and records from which the true financial condition of the savings bank or the state of its affairs can be determined or refused to authorize and direct a person having possession of the savings bank's or a subsidiary's books, papers, records, or accounts to permit the commissioner or a duly authorized representative of the commissioner to inspect or examine them.

Sec. 5.02. **TYPES OF SUPERVISORY ORDER; SERVICE; CONFIDENTIALITY.**

(a) If the commissioner has reasonable cause to believe that one or more grounds for intervention under Section 5.01 of this Act exist or are imminent, the commissioner may issue without notice and hearing one or more of the following types of temporary supervisory orders as necessary to correct and eliminate the grounds for supervisory action:

(1) an order to cease and desist from continuing a particular action, an order to take affirmative action, or both;

(2) a removal or prohibition order suspending or prohibiting a director, officer, employee, agent, or any other person participating in the affairs of the savings bank from further participation in the conduct of the affairs of the savings bank or another savings bank subject to this Act;

(3) an order requiring divestiture of control of a savings bank obtained under Section 3.07 of this Act;

(4) an order requiring the forfeiture and payment of a civil penalty in an amount of not more than \$25,000 by a director, officer, employee, agent, or other person participating in the affairs of the savings bank or another savings bank subject to this Act; or

(5) an order placing the affairs of the savings bank under the control of a conservator designated in the order, who may take possession and control of the books, records, assets, liabilities, and business of the savings bank and manage it under the direction of the commissioner.

(b) A temporary supervisory order issued by the commissioner takes effect when issued and must reasonably detail the facts constituting the grounds for the order.

(c) Service of a temporary supervisory order may be made by certified or registered mail or by personal delivery by an agent of the commissioner. Service on a savings bank is completed on receipt of the order by an officer or director of the savings bank.

(d) A temporary or final supervisory order and all notices, correspondence, or other records relating to the order are confidential and may not be revealed to the public, except for good reason as determined by the commissioner, in a hearing or judicial proceeding under Section 5.03 or 5.04 of this Act, or to assert a defense under Subsection (g) of Section 5.05 of this Act. However, the commissioner may disclose the information to a department, agency, or instrumentality of this state, another state, or the United States if the commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this state, another state, or the United States.

**Sec. 5.03. HEARING ON TEMPORARY SUPERVISORY ORDER.** (a) A temporary supervisory order becomes final and unappealable on the 15th day after the date on which it is issued unless the savings bank or a party affected by the order requests before that date a hearing before the commissioner on the issue of whether the order should be vacated, made permanent, or modified. The commissioner shall set the matter for hearing at the offices of the Savings and Loan Department of Texas. The date for the hearing may not be earlier than the 10th day or later than the 30th day after the date of the request.

(b) The hearing shall be conducted as a contested case under the administrative procedure act. The commissioner may enter a final order that vacates the temporary order or makes it permanent in its original or a modified form consistent with the facts found by the commissioner. A final order shall be entered by the commissioner not later than the 15th day after the date of the completion of the hearing.

(c) A temporary order may not be stayed pending a hearing unless the commissioner orders a stay, and a final order may not be stayed pending judicial review unless the reviewing court orders a stay for good cause.

**Sec. 5.04. ENFORCEMENT OF SUPERVISORY ORDER.** (a) If the savings bank or any person designated in an order violates or is about to violate the order, the commissioner may apply for injunctive relief in a district court in Travis County. A bond is not required of the commissioner with respect to injunctive relief granted.

(b) If a savings bank or a person designated in a final order fails to comply with or otherwise violates the order, the commissioner may, after giving notice, assess a civil penalty against the savings bank, the designated person, or both in an amount not to exceed \$1,000 each for each day of the violation. The savings bank may not reimburse or indemnify a person for all or any part of the civil penalty. In addition to any other remedy provided by law, the commissioner may institute a suit for injunctive relief and for collection of the civil penalty in a district court in Travis County. A bond is not required of the commissioner with respect to injunctive relief granted.

Sec. 5.05. PLACING SAVINGS BANK UNDER CONSERVATOR. (a) Before or at a hearing on an order placing a savings bank under a conservator, the board of directors of the savings bank may present to the commissioner a plan to continue the operation of the savings bank in a manner that will correct or eliminate the grounds for the order. If the commissioner approves the plan or a modification of the plan, the commissioner shall vacate the order and place the savings bank under conservatorship conditioned on the approved plan's implementation and diligent prosecution.

(b) If no plan for continuing operations of the savings bank is approved by the commissioner, the conservator shall continue to manage the affairs of the savings bank under the direction and supervision of the commissioner unless the order is otherwise modified or vacated by subsequent order of the commissioner or as a result of judicial review.

(c) The conservator and any deputy or assistant conservator appointed by the commissioner, on behalf of and under the supervision and direction of the commissioner, shall take charge of the books, records, property, assets, liabilities, and business of the savings bank and shall conduct the business and affairs of the savings bank. The conservator shall remove the causes and conditions that necessitated the conservatorship. The conservator shall make reports to the commissioner as the commissioner requires. The conservator shall preserve, protect, and recover the assets or property of the savings bank, including claims or causes of action belonging to or that may be asserted by the savings bank. The conservator may deal with that property in the capacity of conservator and may file, prosecute, or defend against a suit by or against the savings bank if the conservator considers that action necessary to protect the interested party or property affected by the suit.

(d) During the conservatorship, an officer, director, shareholder, employee, agent, or other person participating in the conduct of the affairs of the savings bank shall act according to the instructions of the conservator and shall exercise only the authority that the conservator expressly grants.

(e) The commissioner shall determine the cost incident to the conservatorship, and that cost shall be paid out of the assets of the savings bank as the commissioner directs.

(f) Suit filed against a savings bank or its conservator while a conservatorship order is in effect must be brought in a court of competent jurisdiction in Travis County. The conservator may file suit in a court of competent jurisdiction in Travis County against any person for the purpose of preserving, protecting, or recovering assets or property of the savings bank, including a claim or cause of action belonging to or that may be asserted by the savings bank.

(g) During the period of conservatorship or supervisory control under Section 5.06 of this Act, a savings bank's promise or agreement to make a loan of money that is not otherwise unenforceable under Chapter 26, Business & Commerce Code, and is made before the order imposing conservatorship or supervisory control is not enforceable against the savings bank unless the promise or agreement or a memorandum of the promise or agreement is:

- (1) in writing setting forth the material terms of the loan and its repayment;
- (2) signed by a duly authorized officer or employee of the savings bank and the person to whom the promise or agreement was made; and
- (3) approved by the board of directors of the savings bank.

(h) The conservator shall serve for the period necessary to accomplish the purposes of the conservatorship. If the savings bank is rehabilitated to the satisfaction of the commissioner, it shall be returned to the management of the board of directors under terms that are reasonable and necessary to prevent recurrence of the conditions creating the need for conservatorship.

(i) During a conservatorship, the commissioner may impose limitations on withdrawals of deposit accounts from a savings bank on a determination that the interest of deposit account holders and creditors of the savings bank are best protected by the limitations. The commissioner shall issue an order detailing the limitations imposed and containing a statement in reasonable detail of the facts constituting the grounds for the imposition of the limitations. The limiting order becomes effective on the service of the order on the conservator. Service may be made by certified or registered mail or by personal delivery by an agent of the commissioner and is complete on receipt by the conservator. Immediately on receipt of the limiting order, a conservator shall place a copy of the order at the main

entrance of the savings bank and deposit account withdrawals in violation of the order may not be permitted after its posting. The limiting order becomes final and unappealable on the 15th day after the date on which it is posted in accordance with this section unless at least 20 percent of the total number of deposit account holders affected by the order request before that date a hearing before the commissioner on the issue of whether the order should be vacated, made permanent, or modified. The commissioner shall set the matter for hearing in the offices of the Savings and Loan Department of Texas. The date for the hearing may not be earlier than the 10th day or later than the 30th day after the date of the request. The hearing shall be conducted as a contested case under the administrative procedure act. The commissioner may issue a final order that vacates the limiting order or makes it permanent in its original or modified form consistent with the facts found by the commissioner. A limiting order may not be stayed pending a hearing unless the commissioner orders a stay, and a final order may not be stayed pending judicial review unless the reviewing court orders a stay for good cause.

Sec. 5.06. VOLUNTARY SUBMISSION TO SUPERVISORY CONTROL. The board of directors of a savings bank may consent to the commissioner's placing the savings bank under supervisory control. The commissioner may appoint a supervisor and one or more deputy supervisors who have the powers of a conservator under Section 5.05 of this Act and other powers established by agreement between the commissioner and the board of directors. The supervisory control continues until the problems giving rise to the supervisory control are corrected. The costs of the supervisory control shall be fixed by the commissioner and paid by the savings bank.

Sec. 5.07. LIQUIDATION BY COMMISSIONER'S ORDER. (a) If it appears doubtful to the commissioner that a savings bank subject to a conservatorship order can be successfully rehabilitated, the commissioner may close the savings bank under Section 5.09 of this Act or may set a hearing to determine whether the savings bank should be liquidated. Notice of any hearing shall be given not later than the 10th day before the hearing date by certified mail to the officers and directors of the savings bank and by publication in a newspaper of general circulation in the county in which the principal office of the savings bank is located.

(b) If the commissioner closes a savings bank under Section 5.09 of this Act or finds after a hearing under Subsection (a) of this section that the savings bank cannot be rehabilitated and that it is in the public interest and the best interest of the deposit account holders and creditors of the savings bank that it be closed and its assets liquidated, the commissioner may issue an order of liquidation appointing a liquidating agent and dissolving the savings bank. The corporate existence of the savings bank continues for three years after the date the order of liquidation is issued for the purpose of adjusting and settling claims not disposed of during the liquidation. If necessary, the commissioner may appoint a special liquidating agent for that purpose at the completion of the liquidation.

(c) Under the supervision of the commissioner, the liquidating agent shall:

(1) receive and take possession of the books, records, assets, and property of the savings bank in liquidation;

(2) sell, enforce collection of, and liquidate the assets and property of the savings bank in liquidation;

(3) sue in the name of the liquidating agent or in the name of the savings bank in liquidation;

(4) defend actions brought against the liquidating agent or the savings bank in liquidation;

(5) receive, examine, and pass on claims against the savings bank in liquidation, including claims of depositors;

(6) make distribution and payment to creditors, deposit account holders, stockholders, and members as their interests may appear;

(7) execute documents and papers and take other actions that the liquidating agent considers necessary or desirable to the liquidation; and

(8) give notice to creditors and deposit account holders directing them to present and prove their claims, by publishing the notice once a week for three successive weeks in a

newspaper of general circulation in each county in which the savings bank in liquidation maintained an office or branch for the transaction of business on the date it ceased unrestricted operations.

(d) The notice under Subdivision (8) of Subsection (c) of this section must require all depositors and creditors to file written proofs of claim at the address designated in the notice. Within 30 days after the date of the first publication of the notice, the liquidating agent shall mail a similar notice to each depositor and creditor shown on the books of the savings bank at the address reflected on the savings bank's books.

(e) Under supervision of the commissioner, the liquidating agent shall from time to time make a ratable liquidation dividend on claims that have been proved to the satisfaction of the liquidating agent or adjusted in a court of competent jurisdiction and, after the assets of the savings bank have been liquidated, shall make further liquidation dividends on claims previously proved or adjusted. For this purpose the statement of an amount due to a claimant shown on the books and records of the savings bank may be accepted instead of a formal proof of claim on behalf of the claimant. A final dividend may not be paid before the beginning of the 19th month after the date of the first publication of notice as prescribed in this section. All claims filed after the declaration and payment of any dividend before the expiration of the 18 months qualify, if approved, to participate in dividends previously paid before any additional dividend is declared. Claims that are presented after the 18th month do not qualify to participate in any dividend or distribution of assets until after full payment of all approved claims presented during the period.

(f) A deposit account holder, creditor, or other person asserting any claim of any character against a savings bank in the process of liquidation under this section must present, before the beginning of the 19th month after the date of the first publication of notice provided in this section, the claim in writing to the commissioner or the liquidating agent, at the address that has been designated in the notice provided in this section. A claim must state the facts supporting the claim, set out any right of priority of payment or other specific rights asserted by the claimant, and be signed and sworn to by the claimant.

(g) Within three months after the date of the receipt of a claim against a savings bank in liquidation, unless the time is extended by written agreement with the claimant, the liquidating agent shall approve or reject the claim in whole or in part. If the liquidating agent approves a claim or any part of the claim, the liquidating agent shall classify the claim and enter it and the action on the claim in a claim register. If the liquidating agent rejects a claim in whole or in part or denies any right of priority of payment or any other right asserted by the claimant, the liquidating agent shall notify the claimant of the action by registered mail.

(h) Within three months after the date of mailing of notice by the liquidating agent as provided by the preceding subsection, a claimant may sue on the claim in a district court of Travis County. If the claimant does not sue, the action of the liquidating agent is final on the expiration of that period. The trial of a suit is de novo as if originally filed in that court and is subject to the rules of procedure and appeal applicable to civil cases.

(i) On liquidation of a savings bank, claims for payment have the same priority that similar claims would have on the liquidation of a federal savings bank under federal law.

(j) At any time after the expiration of 18 months after the date of the first publication notice specified in this section and after the liquidating agent liquidates all assets of the savings bank capable of liquidation or realizes sufficient funds from the liquidation to pay the costs of liquidation and all claims filed and established and to leave funds available for the payment of all nonclaiming deposit account holders and creditors, the liquidating agent shall declare and pay a final dividend. The liquidating agent shall deposit all unclaimed dividends and all funds available for nonclaiming deposit account holders and creditors in one or more state-chartered financial institutions for the benefit of the deposit account holders and creditors entitled to those dividends or funds. The liquidating agent shall pay a deposit account holder or creditor, on demand, any amount held for the benefit of the deposit account holder or creditor. If the liquidating agent is in doubt as to the identity of a claimant or a claimant's right to the amount held, the liquidating agent shall reject the claim and notify the claimant by registered mail. Within three months after the date of the mailing of the notice, the claimant may bring suit against the liquidating agent in a district court of Travis County

to recover the funds. The suit is in the nature of an action in rem and governed by the rules of procedure and appeal applicable to civil cases. The judgment in the suit is binding on all persons interested in the dividends or funds. If a suit is not filed within the time prescribed, the liquidating agent's rejection of the claim is final. After paying a final dividend and performing each act necessary or proper for the benefit of the deposit account holders and creditors in connection with the liquidation of the assets of a savings bank, the liquidating agent shall file with the commissioner a final report of the liquidation.

(k) The commissioner shall determine the cost incident to the liquidation, and that cost shall be paid out of the assets of the savings bank as the commissioner directs.

(l) The provisions of the administrative procedure act relating to a contested hearing apply to any hearing called by the commissioner under this section.

Sec. 5.08. COMPLETION OF LIQUIDATION. The commissioner may remove a liquidating agent and appoint another agent with or without cause. If a liquidating agent resigns, dies, or becomes unable to serve for any reason, the commissioner shall promptly appoint another agent. When a liquidation is complete, the liquidating agent shall certify that fact to the commissioner, and the commissioner shall issue an order closing the liquidation. After a closing order, the commissioner and the liquidating agent are released and discharged from any further duty, obligation, or liability in connection with the administration of the affairs of the savings bank, and a person does not have and may not maintain any claim, suit, or action against the commissioner or the liquidating agent, individually or in their official capacities, except a suit to recover unclaimed deposits as provided in this section.

Sec. 5.09. CLOSING OF SAVINGS BANK BY COMMISSIONER OR DIRECTORS.

(a) Notwithstanding any other provision of this chapter, the commissioner or the commissioner's authorized representative may close a savings bank if, after an examination, the commissioner determines that:

(1) the interests of the deposit account holders and creditors of the savings bank are jeopardized because of the savings bank's insolvency or imminent insolvency or a substantial dissipation of assets or earnings of the savings bank due to a violation of law or rules or an unsafe or unsound practice; and

(2) closing the savings bank and liquidating its assets is in the best interest of the deposit account holders and creditors.

(b) On closing a savings bank under this section, the commissioner may liquidate the savings bank as provided by this chapter or may tender the assets and all affairs of the savings bank to the Federal Deposit Insurance Corporation and appoint the Federal Deposit Insurance Corporation as receiver or liquidating agent to act in accordance with this chapter or federal law. If the Federal Deposit Insurance Corporation accepts the tender and appointment, it may act without bond or other security as to the appointment and, without court supervision, may exercise all rights, powers, and privileges provided by the laws of this state to a receiver or liquidating agent, as applicable, and any applicable right, power, or privilege available under federal law. On acceptance of the appointment, the possession of and title to all the assets, business, and property of the savings bank pass to the Federal Deposit Insurance Corporation without the execution of instruments of conveyance, assignment, transfer, or endorsement. If the Federal Deposit Insurance Corporation pays the insured deposit liabilities of a savings bank that was closed or is being liquidated under this chapter, whether or not the Federal Deposit Insurance Corporation has become receiver or liquidating agent, the Federal Deposit Insurance Corporation is subrogated, to the extent of the payment, to all rights that the owners of the deposit accounts have against the savings bank.

(c) Not later than the second day, excluding legal holidays, after the day that the commissioner closes a savings bank under this section, the savings bank, acting by resolution of its board of directors, may sue in a district court of Travis County to prohibit the commissioner from taking further action under this section. The court may restrain the commissioner from taking further action until a hearing on the merits. If the court restrains the commissioner, it shall instruct the commissioner to hold the assets and affairs of the savings bank in the commissioner's possession until disposition of the suit. On receipt of that instruction, the commissioner shall refrain from taking further action, except the commissioner, with the approval of the district judge, may take action as necessary or proper to prevent

loss or depreciation in the value of the assets. The court as soon as possible shall hear the suit on its merits and shall enter a judgment prohibiting or refusing to prohibit the commissioner from proceeding under this section. This judgment may be appealed as in other civil cases, but the commissioner, regardless of the judgment entered by the trial court or any supersedeas bond filed, retains possession of the assets of the savings bank until final disposition on appeal.

(d) A board of directors may, by resolution and with the consent of the commissioner, close a savings bank and tender its assets and all its affairs to the commissioner for disposition as authorized by this section.

## CHAPTER 6. CORPORATE ADMINISTRATION

Sec. 6.01. BOARD OF DIRECTORS. (a) The business of a savings bank shall be directed by a board of directors of not fewer than five or more than 21 members elected by majority vote at each annual meeting of the members or stockholders. A savings bank authorized to issue capital stock may provide in its bylaws that all or at least a majority of its board of directors must be stockholders.

(b) The number of directors may be changed, within the prescribed limits, by resolution adopted at any annual meeting of members or stockholders or any special meeting called for that purpose.

Sec. 6.02. ORGANIZATIONAL MEETINGS. Within 30 days after the date on which the corporate existence of a savings bank begins, the initial board of directors shall hold an organizational meeting and, under the provisions of this Act and the bylaws, shall elect officers and take other action as appropriate in connection with beginning the transaction of business by the savings bank. The commissioner on good cause shown may extend by order the time within which the organizational meeting is to be held.

Sec. 6.03. QUALIFICATION OF DIRECTORS; VACANCIES. (a) A person may not be a member of the board of directors of a savings bank if the person:

- (1) is not a citizen of the United States;
- (2) is not at least 18 years of age;
- (3) has been adjudicated bankrupt or convicted of a criminal offense involving dishonesty or breach of trust, unless given prior written approval to be a member of the board by the commissioner;
- (4) has a final judgment entered against the person for a sum of money that has remained unsatisfied or unsecured for more than six months after the date of the judgment's entry, unless the commissioner gives the person prior written approval to be a member of the board or unless the judgment was satisfied of record more than one year before the date of the election; or
- (5) is a director, officer, or employee of another savings bank, unless given the prior written approval to be a member of the board by the commissioner.

(b) The bylaws of a savings bank may prescribe other qualifications for directors.

(c) A vacancy on the board of directors is filled by a majority vote of the remaining directors, though less than a quorum, by electing a director to serve until the next annual meeting of members or stockholders. If a vacancy on the board of directors occurs from any cause, the remaining directors may continue direction of the savings bank until the vacancy is filled.

Sec. 6.04. OFFICERS. The officers of a savings bank consist of a president, one or more vice-presidents, a secretary, and other officers as prescribed by the bylaws. The officers are elected by a majority vote of the board of directors. The managing officer must be a member of the board of directors.

Sec. 6.05. INDEMNITY BONDS OF DIRECTORS, OFFICERS, AND EMPLOYEES. Each savings bank shall maintain on file with the commissioner an effective blanket indemnity bond with an adequate corporate surety protecting the savings bank from loss by or through any fraud, dishonesty, forgery or alteration, larceny, theft, embezzlement, robbery, burglary, holdup, wrongful or unlawful abstraction, misappropriation, or any other dishonest or criminal

action or omission by any officer or employee of the savings bank or any director of the savings bank when performing the duty of an officer or employee. A savings bank that employs collection agents that for any reason are not covered by a bond as required shall provide for the bonding of each collection agent in an amount equal to at least twice the average monthly collection of the agent. The agents shall make settlement with the savings bank at least monthly. Bond coverage is not required of an agent that is a financial institution insured by the Federal Deposit Insurance Corporation. The amounts and form of bonds and the sufficiency of the surety on the bonds must be approved by the board of directors and the commissioner. Each bond must provide that a cancellation of the bond either by the surety or the insured does not become effective until the 30th day after the date on which written notice is given to the commissioner unless the commissioner gives prior approval to an earlier date.

**Sec. 6.06. MEETINGS OF STOCKHOLDERS OR MEMBERS; VOTING RIGHTS; PROXIES.** The members or stockholders of a savings bank shall hold an annual meeting at the time fixed in the bylaws of the savings bank. Special meetings may be called as provided in the bylaws. The voting rights of a person who is entitled to vote at an annual or special meeting of the savings bank shall be the same as those of a shareholder in a domestic business corporation under the Texas Business Corporation Act. The bylaws must provide the manner of computing the number of votes that a member or stockholder is entitled to cast. For a capital stock savings bank, the bylaws may provide that only holders of capital stock may vote. Voting may be in person or by proxy. A proxy must be in writing and signed by the member or stockholder or a duly authorized attorney in fact and be filed with the secretary. Unless otherwise specified in the proxy, a proxy continues in force from year to year until a revocation in writing is delivered to the secretary or until superseded by a subsequent proxy. The bylaws of a savings bank must specify the quorum requirements and other voting requirements for conducting business at membership meetings.

**Sec. 6.07. ACCESS TO BOOKS AND RECORDS.** (a) Each borrower or deposit account holder of a savings bank has the right to inspect the books and records of the savings bank that relate to the borrower's or deposit account holder's loan or account. Except for the borrower's or deposit account holder's right of inspection, the right of inspection and examination of the books and records of a savings bank is limited to the commissioner and the commissioner's duly authorized representatives under Section 4.06 of this Act, persons authorized to act for the savings bank, and an authorized agent of a governmental agency that has insured the deposit accounts of the savings bank. In a judicial proceeding, the court may order the production of books, records, and files; however, the books, records, and files of a savings bank are not admissible as evidence in any proceeding concerning the validity of a tax assessment or the collection of delinquent taxes, penalties, and interest, unless a stockholder or deposit account holder is a proper party to the proceeding, in which event the books, files, and records pertaining to the account of the party are admissible, or unless the savings bank is a proper party to the proceeding, in which event any book, file, or record material to the proceeding is admissible. A person is not entitled to a partial or complete list of the names of stockholders of a stock savings bank or the members of a mutual savings bank unless expressly permitted by the board of directors.

(b) Each stockholder of a capital stock savings bank has the same rights to examine the relevant books and records of a savings bank as a shareholder of a business corporation under the Texas Business Corporation Act.

**Sec. 6.08. AMENDMENT OF ARTICLES OF INCORPORATION OR BYLAWS.** A savings bank, by resolution adopted by a majority vote of those entitled to vote attending an annual meeting or a special meeting called for that purpose, may amend its articles of incorporation or bylaws in a manner not inconsistent with this Act. An amendment may not take effect before it is filed with and approved by the commissioner.

**Sec. 6.09. CONFLICTS OF INTEREST.** (a) Except as the commissioner and the finance commission may provide by rule, a director or officer may not:

- (1) receive directly or indirectly any commission on or benefit from a loan made by the savings bank;
- (2) pay for services rendered to a borrower from the savings bank in connection with a loan;



(3) direct or require a borrower on a mortgage to negotiate an insurance policy on the mortgage property through any particular insurance company, attempt to divert to a particular insurance broker the business of borrowers from the savings bank, or refuse to accept an insurance policy on the mortgaged property because it was not negotiated through a particular insurance broker;

(4) become an endorser, surety, or guarantor or in any manner an obligor for a loan made by the savings bank;

(5) borrow or use, individually or as agent or partner of another, directly or indirectly, funds of the savings bank;

(6) become the owner of real property on which the savings bank holds a mortgage unless the loan is fully secured by:

(A) a first-lien mortgage on property that is to be occupied as the director's or officer's primary residence and that is specifically approved in writing by the board of directors; or

(B) a deposit maintained by the officer or director with the savings bank; or

(7) engage in any other activity prohibited by a rule of the commissioner and the finance commission.

(b) Except as the commissioner and the finance commission may provide by rule, a savings bank may not make a loan to a corporation in which a director or officer holds stock, options, or warrants to purchase stock in the amount of five percent or more of the outstanding stock or in which the director and the other directors of the savings bank hold in the aggregate stock, options, or warrants to purchase stock of five percent or more of the outstanding stock. A deposit with a banking corporation is a loan within the meaning of this section.

(c) This section does not prohibit a savings bank from:

(1) making a loan to a religious corporation, club, or other membership corporation of which one or more directors or officers are members, but in which they have no financial interest;

(2) making a loan to or purchasing guaranteed mortgages from a stock corporation, if a director does not own more than 15 percent of the capital stock of the corporation and the total amount of the capital stock of the corporation owned by all directors of the savings bank is less than 25 percent.

## CHAPTER 7. POWERS

Sec. 7.01. GENERAL CORPORATE POWERS. Each savings bank has the powers authorized by this Act and other rights, privileges, and powers as may be incidental to or reasonably necessary for the accomplishment of the objects and purposes of the savings bank. Subject to the prior approval of the commissioner, a savings bank may engage in business as a savings bank in any state or territory of the United States to the extent permitted by the laws of that state or territory, either directly or through ownership of another savings bank incorporated under the laws of another state.

Sec. 7.02. POWER TO BORROW. A savings bank may borrow and give security, subject to the rules adopted by the commissioner and the finance commission. In addition, at any time through action of its board of directors a savings bank may issue capital notes, debentures, or other capital obligations as are authorized under the rules adopted by the commissioner and the finance commission.

Sec. 7.03. FISCAL AGENT. A savings bank may act as fiscal agent of the United States and, when so designated by the secretary of the treasury, shall perform under regulations as the secretary may require and may act as agent for any instrumentality of the United States and as agent of this state or any state governmental subdivision or instrumentality.

Sec. 7.04. POWER TO ACT UNDER FEDERAL RETIREMENT PLANS. A savings bank and a federal savings bank, if its charter and applicable federal rules permit, may exercise all powers necessary to qualify as a trustee or custodian for retirement plans permitted or recognized by federal law and may invest funds held in that capacity in the

accounts of the institution if the trust or custodial retirement plan does not prohibit the investment.

Sec. 7.05. **INVESTMENT IN BANKING PREMISES.** A savings bank may invest in real estate, buildings, and related facilities, including parking, and in leasehold improvements for rented facilities for use by the savings bank as its banking premises.

Sec. 7.06. **LIMITATION ON LOANS TO ONE BORROWER.** A savings bank may not make loans to any one borrower to a greater extent than:

(1) a savings association is permitted under Subsection (u) of Section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. Section 1464(u)); or

(2) permitted by rule adopted under Subdivision (16) of Section 4.04 of this Act.

Sec. 7.07. **INVESTMENTS IN EQUITY SECURITIES.** (a) A savings bank or a subsidiary may not invest in stock or equity securities unless the securities qualify as investment grade securities under rules adopted by the commissioner and the finance commission. Additionally, a savings bank may not invest in stock or equity securities unless the securities are eligible investments for a federal savings and loan association.

(b) The limitations of Subsection (a) do not apply to equity securities:

(1) issued by any United States government-sponsored corporation including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association; or

(2) issued by a service corporation, an operating subsidiary, or a finance subsidiary of the savings bank.

(c) The commissioner and the finance commission may adopt rules necessary to implement this section, including eligible investment criteria, investment diversification, and resource management requirements.

Sec. 7.08. **TRUST POWERS.** A savings bank may exercise trust powers in compliance with state law, subject to the prior written approval of the commissioner. The commissioner's approval must be based on findings that the applicant's savings bank is in compliance with its regulatory capital requirements, is well managed, and exhibits earnings, resources, and managerial talent adequate to maintain a trust department.

Sec. 7.09. **COMMERCIAL LOANS.** Subject to the rules of the commissioner and the finance commission, a savings bank may lend and invest not more than 15 percent of its total assets in commercial loans. A commercial loan is a non-real-estate loan for business, commercial, corporate, or agricultural purposes.

Sec. 7.10. **SUBSIDIARIES.** (a) With the prior consent of the commissioner and subject to the rules of the commissioner and the finance commission, a savings bank may invest in subsidiary corporations created under general corporate law for corporate organizations.

(b) A savings bank may not make any investment in a subsidiary corporation if its aggregate investments in subsidiaries would exceed 10 percent of its total assets.

(c) The subsidiary corporation is subject to regulation and examination by the commissioner, and the subsidiary corporation shall pay the cost of the regulation and examination.

(d) The commissioner and the finance commission shall adopt rules on permitted activities of a subsidiary corporation.

Sec. 7.11. **PARITY.** Subject to the limitations and restrictions prescribed by rule of the commissioner and the finance commission, a savings bank may make a loan or investment or engage in an activity permitted under state law for banks or savings and loan associations or under the laws of the United States for federal savings and loan associations, savings banks, or national banks with principal offices located in this state.

Sec. 7.12. **LOAN EXPENSES.** (a) Subject to Subsection (b) of this section, a savings bank may require borrowers to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. Those expenses may be collected by the savings bank from the borrower and retained by the savings bank or paid to a person rendering services for which a charge has been made, including an officer, director, or employee of the savings bank rendering the service, or the payments may be paid directly by the borrower to the person rendering the service. Expenses under this section

are not a part of the interest or compensation charged by the savings bank for the loan of money. A savings bank may charge penalties for prepayment or late payments. Unless otherwise agreed in writing, prepayment of the principal shall be applied to the final installment of the note or other obligation until that installment is fully paid, and further prepayments shall be applied to installments in the inverse order of their maturity.

(b) A savings bank may charge a borrower the reasonable value of services rendered in connection with the making of a consumer loan, and only expenses necessary and proper for the protection of the lender and actually incurred in connection with the making of the loan may be charged.

Sec. 7.13. **ADVANCES TO PAY TAXES OR OTHER CHARGES.** (a) A savings bank may pay taxes, assessments, insurance premiums, and other similar charges for the protection of the savings bank's interests in property securing the savings bank's real estate loans. Those payments are advances and may be carried on the savings bank's books as an asset of the savings bank for which the savings bank may charge and collect interest, or the payments may be added to the unpaid balance of the loan to which they apply as of the first day of the month in which the payments are made. The payments constitute a valid lien against the real estate securing the loan for which they are made.

(b) A savings bank may require a borrower to pay monthly in advance, in addition to interest and principal, an amount equal to one-twelfth of the estimated annual taxes, assessments, insurance premiums, and other charges on the real estate securing a loan, to enable the savings bank to pay the charges as they become due. The amount of the monthly payment may be increased or decreased as necessary to meet the charges. A savings bank may carry the payments in trust in an account or may credit them to the indebtedness and advance the money for charges as they come due. A savings bank shall keep a record of the status of taxes, assessments, insurance premiums, and other charges on all real estate securing its loans and on all real and personal property owned by the savings bank.

Sec. 7.14. **RIGHT TO ACT TO AVOID LOSS.** This Act does not deny a savings bank the right to invest its funds, operate a business, manage or deal in property, or take any other action over whatever period may be reasonably necessary to avoid loss on a loan or investment made or an obligation created in good faith in the usual course of business of the savings bank, as authorized by this Act and rules adopted under this Act. This Act does not prohibit a savings bank from developing or building on land acquired by it under this section or from completing the construction of a building under a construction loan contract in which the borrower has failed to comply with the terms of the contract.

Sec. 7.15. **GENERAL POWERS.** A savings bank has the powers specifically conferred by this Act, including the following general corporate powers:

- (1) to sue and be sued, complain, and defend in its corporate name;
- (2) to adopt and operate reasonable bonus plans, profit-sharing plans, stock bonus plans, stock option plans, pension plans, and similar incentive plans for its directors, officers, and employees, subject to any limitations contained in this Act or rules adopted under this Act;
- (3) to make reasonable donations for the public welfare or for charitable, scientific, religious, or educational purposes;
- (4) to pledge its assets to secure deposits of public money of the United States, when required by the United States, including revenue and funds the deposit of which is subject to control or regulation of the United States or any of its officers, agents, or employees;
- (5) to pledge its assets to secure deposits of public money of any state or any political corporation or subdivision of any state;
- (6) to become a member of or deal with any corporation or agency of the United States or this state, to the extent that the corporation or agency assists in furthering or facilitating savings banks' purposes or powers, and to that end to purchase stock or securities of the corporation or agency or deposit money with the corporation or agency, and to comply with any other conditions of membership credit;
- (7) to acquire and hold membership in a Federal Home Loan Bank or the Federal Reserve System;

(8) to hold title to assets of any kind and to administer those assets as necessary if their acquisition occurred as a result of the collection or liquidation of loans, investments, or discounts;

(9) to receive and repay deposits and accounts of all types in keeping with this Act and the rules of the commissioner and the finance commission; and

(10) to lend and invest its money as authorized by this Act and by the rules of the commissioner and the finance commission.

Sec. 7.16. INVESTMENT WITHIN SAVINGS BANK'S LOCAL SERVICE AREA. (a) Each savings bank shall maintain in its portfolio at least 15 percent of its local service area deposits in the following categories of assets and investments:

(1) first and second lien residential mortgage loans or foreclosed residential mortgage loans originated from within the savings bank's local service area;

(2) home improvement loans;

(3) interim residential construction loans;

(4) mortgage-backed securities secured by loans from within the savings bank's local service area; and

(5) loans for community reinvestment purposes.

(b) The commissioner shall define an applicant's local service area at the time of its application for incorporation as or conversion to a savings bank. Unless otherwise agreed to by the commissioner and the applicant, the applicant may rely on this definition for the duration of the applicant's corporate existence as a savings bank.

(c) The commissioner and the finance commission shall adopt rules to implement this section. The rules shall define the categories of loans and investments described in Subsection (a) of this section. The commissioner, in accordance with rules adopted under this subsection, may grant certain limited-term waivers from the requirements of Subsection (a) of this section if quality loans in the categories described in that subsection are not available from within the savings bank's local service area.

## CHAPTER 8. OPERATIONS

Sec. 8.01. GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. Each savings bank shall maintain its books and records according to generally accepted accounting principles and according to rules adopted by the commissioner and the finance commission.

Sec. 8.02. LIQUIDITY. Unless approved in advance by the commissioner, a savings bank shall maintain a minimum of 10 percent of its assets in cash, balances in a federal reserve bank or passed through a federal home loan bank or another depository institution to a federal reserve bank under the Federal Reserve Act (12 U.S.C. Section 221 et seq.), or other readily marketable investments, including unencumbered federal government sponsored enterprises securities, as allowed by rules adopted by the commissioner and the finance commission.

Sec. 8.03. REGULATORY CAPITAL. A savings bank shall maintain regulatory capital in the amount prescribed by rules of the commissioner and the finance commission. The amount may not be less than the amount of regulatory capital required for a corresponding national bank.

Sec. 8.04. COMPUTATION OF NET INCOME. A savings bank shall close its books at the times that its bylaws provide for the purpose of determining the gross income of the savings bank for the period since the date of the last closing of its books. The net income for the period is the amount of the gross income minus the amount of the expenses of operating the savings bank for the period.

Sec. 8.05. EARNINGS ON ACCOUNTS. A savings bank may contract to pay interest on deposit accounts or may pay earnings on deposit accounts in the form of dividends declared by the board of directors. Earnings in the form of interest or dividends shall be computed and paid according to rules adopted by the commissioner and the finance commission.

Sec. 8.06. **DIVIDENDS ON CAPITAL STOCK.** The board of directors of a capital stock savings bank may declare and pay dividends out of current or retained income in cash or additional stock to the holders of record of the stock outstanding on the date the dividends are declared.

Sec. 8.07. **USE OF SURPLUS ACCOUNTS AND EXPENSE FUND CONTRIBUTIONS.** A savings bank, at a closing date, may use all or part of a surplus account, whether earned or paid-in, or expense fund contributions on its books to meet expenses of operating the savings bank for the period just closed, required transfers to loss reserves, or the payment or credit of earnings on deposit accounts.

## CHAPTER 9. DEPOSIT ACCOUNTS

Sec. 9.01. **DEPOSITS.** A savings bank may receive deposits of funds subject to withdrawals or to be paid on checks of the deposit account holder. Those deposits must be payable on demand, without notice, unless the contract of deposit expressly provides otherwise.

Sec. 9.02. **NO LIMITATION ON DEPOSIT ACCOUNTS.** There is no limit on the number and value of deposit accounts that a savings bank may accept unless limits are fixed by its board of directors.

Sec. 9.03. **WHO MAY OPEN A DEPOSIT ACCOUNT.** Investments in deposit accounts may be made with cash only and may be made by any person, in the person's own right or in a trust or other fiduciary capacity, and by any partnership, association, corporation, political subdivision, or public and governmental unit or entity.

Sec. 9.04. **CONTRACTS.** Each holder of a deposit account shall execute a contract setting forth any special terms and provisions applicable to the account and the conditions on which withdrawals may be made. The contract may not be inconsistent with this Act. The contract shall be held by the savings bank as part of its records pertaining to the deposit account. The contract in respect to deposit accounts of political subdivisions and public and governmental units or entities shall provide that the holder of the deposit account may not become a member of the savings bank.

Sec. 9.05. **TRANSFER OF DEPOSIT ACCOUNTS.** Deposit accounts are transferable on the books of the savings bank only on presentation of evidence of transfer satisfactory to the savings bank, accompanied by proper application for transfer by the transferee. The transferee shall accept the deposit account subject to the terms and conditions of the contract, the bylaws of the savings bank, and the provisions of its charter. A savings bank may treat the holder of record of a deposit account as the owner of the account for all purposes without being affected by any notice to the contrary, unless the savings bank acknowledges in writing a pledge of the deposit account.

Sec. 9.06. **DEPOSIT ACCOUNTS OF MINORS.** A savings bank and any federal savings bank may accept a deposit account from a minor as the sole and absolute owner of the deposit account and may pay withdrawals, accept pledges to the savings bank, and act in any manner with respect to the deposit account on the order of the minor. A payment or delivery of rights to a minor or a receipt or acquittance signed by a minor who holds a deposit account is a valid and sufficient release and discharge of the institution for any payment so made or delivery of rights to the minor. The receipt, acquittance, pledge, or other action required by the institution to be taken by the minor is binding on the minor as if the minor were of full age and legal capacity, except that if a parent or guardian of the minor desires that the minor not have authority to pledge, hypothecate, control, transfer, or make withdrawals from the deposit account, that fact may be made known to the savings bank in writing by the parent or guardian, in which event the right of the minor to pledge, hypothecate, control, transfer, or make withdrawals from the deposit account during the minority of the minor may not be executed by the minor except with the joinder of the parent or guardian. In the event of the death of the minor, the receipt or acquittance of a parent or guardian of the minor is a valid and sufficient discharge of the institution for any sum or sums not exceeding in the aggregate \$1,000.

Sec. 9.07. **APPLICABILITY OF PROBATE CODE.** The applicable provisions of Chapter XI, Texas Probate Code, govern deposit accounts held in a savings bank.

Sec. 9.08. PLEDGE TO SAVINGS BANKS OF JOINT DEPOSIT ACCOUNTS. The pledge or hypothecation to a savings bank or federal savings bank of all or part of a deposit account issued in the names of two or more persons, signed by a person on whose signature withdrawals may be made from the deposit account, is, unless the terms of the deposit account provide specifically to the contrary, a valid pledge and transfer to the institution of that part of the deposit account pledged or hypothecated and does not operate to sever or terminate the joint and survivorship ownership of all or any part of the deposit account.

Sec. 9.09. DEPOSIT ACCOUNTS OF FIDUCIARIES. A savings bank or a federal savings bank doing business in this state may accept deposit accounts in the name of an administrator, executor, custodian, guardian, trustee, or other fiduciary for a named beneficiary, and the fiduciary may vote as a member as if the membership were held absolutely and may open and make additions to and withdraw from the deposit account in whole or in part. Except as otherwise provided by law, a payment to a fiduciary or a receipt or acquittance signed by a fiduciary to whom any payment is made is a valid and sufficient release and discharge of an institution for the payment so made. If a person holding a deposit account in a fiduciary capacity dies and the probate court does not give to the savings bank written notice of the revocation or termination of the fiduciary relationship or of any other disposition of the beneficial estate, the withdrawal value of the deposit account and earnings on the deposit account or other rights relating to the deposit account, at the option of the institution, may be paid or delivered in whole or in part to the beneficiaries, and the savings bank has no further liability for the deposit account.

Sec. 9.10. TRUST ACCOUNTS WHERE TRUST INSTRUMENT NOT DISCLOSED. If a deposit account is opened by a person claiming to be a trustee for another and notice of the existence and terms of a legal and valid trust other than a written claim against the deposit account is not provided to the savings bank, withdrawals from the deposit account may be made on the signature of the person claiming to be the trustee, and in the event of the death of the trustee, the withdrawal value of the deposit account or any part of the deposit account, together with earnings on the deposit account, may be paid to the person for whom the deposit account was stated to have been opened, and the savings bank has no further liability for the deposit account.

Sec. 9.11. POWERS OF ATTORNEY ON DEPOSIT ACCOUNTS. A savings bank doing business in this state may continue to recognize the authority of an attorney in fact authorized in writing to manage or to make withdrawals either in whole or in part from the deposit account of a member until it receives written notice or is on actual notice of the revocation of the authority. For the purposes of this section, written notice of the death or adjudication of incompetency of a member constitutes written notice of revocation of the authority of the attorney.

Sec. 9.12. DEPOSIT ACCOUNTS AS LEGAL INVESTMENTS. All administrators, executors, guardians, trustees, and other fiduciaries; counties, municipalities, and all other political subdivisions or instrumentalities of this state; business and nonprofit corporations; charitable or educational corporations or associations; and banks, savings and loan associations, credit unions, and all other financial institutions may invest funds held by them in deposit accounts of a savings bank doing business in this state. An investment made by an insurance company is eligible for tax reducing purposes under Articles 4.10 and 4.11, Insurance Code. An investment by a school district of any of its funds in accounts that are insured by the Federal Deposit Insurance Corporation meets the requirements of Sections 20.42 and 23.79, Education Code.

Sec. 9.13. REDEMPTION OF DEPOSIT ACCOUNTS. If funds are on hand for the purpose and no contractual prohibition exists, a savings bank may redeem, in a manner determined by the board of directors, all or any part of any of its deposit accounts by giving 30 days' notice by certified mail addressed to each affected deposit account holder at the holder's last address as recorded on the books of the savings bank. Redemption of deposit accounts must be done on a nondiscriminatory basis. A savings bank may not redeem deposit accounts if the savings bank is subject to conservatorship or a supervisory control action under Chapter 5 of this Act, unless directed to do so by the commissioner. The redemption price of a deposit account redeemed shall be the account's withdrawal value. If notice of redemption has been given and on or before the redemption date the funds necessary for the

redemption have been set aside to be and continue to be available for redemption, earnings on the deposit accounts called for redemption cease to accrue beginning on the date specified as the redemption date, and all rights with respect to the deposit accounts other than the right of the deposit account holder of record to receive the redemption price terminate on the redemption date.

Sec. 9.14. LIEN ON DEPOSIT ACCOUNTS. A savings bank or a federal savings bank doing business in this state has a lien, without further agreement or pledge, on all deposit accounts owned by any account holder to whom or on whose behalf the savings bank has made an advance of money by loan or otherwise. On default in the repayment or satisfaction of the account holder's obligation, the savings bank, without notice to or consent of the account holder, may cancel on its books all or any part of the deposit account owned by the account holder and apply the value of the deposit account in payment on account of the obligation. A savings bank may by written instrument waive its lien in whole or in part on any deposit account. A savings bank may take a pledge of deposit accounts of the savings bank owned by an account holder other than the borrower as additional security for a loan secured by a deposit account, real estate, or both.

Sec. 9.15. METHOD OF PAYING EARNINGS ON DEPOSIT ACCOUNT. Dividends or interest shall be credited to a deposit account on the books of the savings bank unless a deposit account holder requests and the savings bank agrees to pay dividends or interest on the deposit account in cash. Dividends payable in cash may be paid by check or bank draft.

## CHAPTER 10. HOLDING COMPANIES

Sec. 10.01. REGISTRATION. A holding company shall register with the commissioner on forms prescribed by the commissioner within 90 days after the date of becoming a holding company. The forms must include information, under oath or otherwise, on the financial condition, ownership, operations, management, and intercompany relations of the holding company and its subsidiaries and on related matters the commissioner finds necessary and appropriate. On application, the commissioner may extend the time within which a holding company shall register and file the required information.

Sec. 10.02. REPORTS. Each holding company and each subsidiary of a holding company, other than a savings bank, shall file with the commissioner reports required by the commissioner. The reports must be made under oath and must be in the form and for the periods prescribed by the commissioner. Each report must contain information concerning the operations of the holding company and its subsidiaries as the commissioner may require.

Sec. 10.03. BOOKS AND RECORDS. Each holding company shall maintain books and records as may be prescribed by the commissioner.

Sec. 10.04. EXAMINATIONS. Each holding company and each subsidiary of a holding company is subject to examinations as the commissioner may prescribe. The holding company shall pay the cost of an examination. The confidentiality provisions of Section 4.08 of this Act apply to this section. The commissioner may furnish examination and other reports to any appropriate governmental department, agency, or instrumentality of this state, another state, or the United States. For purposes of this section, the commissioner, to the extent deemed feasible, may use reports filed with or examinations made by appropriate federal agencies or regulatory authorities of other states.

Sec. 10.05. AGENT FOR SERVICE OF PROCESS. The commissioner may require a holding company or a person, other than a corporation, connected with a holding company to execute and file a prescribed form of irrevocable appointment of agent for service of process.

Sec. 10.06. RELEASE FROM REGISTRATION. The commissioner at any time, on the commissioner's own motion or on application, may release a registered holding company from a registration made by the company if the commissioner determines that the company no longer controls a savings bank.

Sec. 10.07. TRANSACTIONS WITH AFFILIATES. Transactions between a subsidiary savings bank of a holding company and any affiliate of the savings bank subsidiary are subject to rules adopted by the commissioner and the finance commission.

Sec. 10.08. RULES. The commissioner and the finance commission shall adopt rules providing for registration and reporting of holding companies, setting limitations on the activities and investments of holding companies, and providing for other matters as may be appropriate under this chapter.

#### CHAPTER 11. FOREIGN FINANCIAL INSTITUTIONS

Sec. 11.01. LIMITATION ON RIGHT TO DO BUSINESS AS A SAVINGS BANK. (a) A person, firm, company, association, fiduciary, partnership, or corporation by whatever name called may not do business as a savings bank in this state or maintain an office in this state for the purpose of doing business in this state unless it is:

- (1) a domestic savings bank;
- (2) a federal savings bank;
- (3) a foreign savings bank that is a surviving financial institution holding a certificate of authority issued under Section 11.07 of this Act; or
- (4) a foreign savings bank that was a foreign savings and loan association holding a certificate of authority issued pursuant to Section 61 of Senate Bill No. 111, Chapter 61, Acts of the 41st Legislature, 2nd Called Session, 1929.

(b) The prohibition in this section does not apply to any activity that does not constitute transacting business in this state under Section B, Article 8.01, Texas Business Corporation Act.

Sec. 11.02. RENEWAL OF OUTSTANDING CERTIFICATES. A foreign savings bank holding a certificate of authority under Section 11.07 of this Act may renew the certificate from year to year by the payment of a renewal fee in January of each year in an amount set annually by resolution of the finance commission. The savings bank shall pay the same examination charges paid by a domestic savings bank under Section 4.07 of this Act, together with all traveling expenses of the examination, except that if the examination fee is inadequate to defray all expenses of the examination, the savings bank shall pay the additional cost. Examinations may not be made more than once a year.

Sec. 11.03. CONTRACTS DEEMED MADE IN THIS STATE. A contract made by any foreign savings bank with any citizen of this state is a Texas contract and shall be construed by the courts of this state according to the laws of this state.

Sec. 11.04. RIGHTS, PRIVILEGES, AND OBLIGATIONS OF FOREIGN SAVINGS BANKS WITH CERTIFICATES OF AUTHORITY. (a) A foreign savings bank operating under a certificate of authority under Section 11.07 of this Act has the rights and privileges of a savings bank created under this Act, and its deposit accounts are eligible for investment to the same extent as those of a domestic savings bank. This Act and rules adopted under this Act are applicable to a foreign savings bank with respect to its operations in this state and may be enforced by the commissioner. A foreign savings bank may not be considered a savings bank organized under the laws of this state.

(b) The commissioner, in exercising the supervisory and regulatory authority granted under Chapters 4 and 5 of this Act, may enter into cooperative agreements with regulatory authorities of other states to facilitate the regulation of foreign savings banks doing business in this state and may accept reports of examinations and other records from those regulatory authorities in lieu of conducting examinations outside this state.

(c) A foreign savings bank operating in this state as authorized by this chapter may not exercise any powers, perform any functions, or offer any services that a domestic savings bank could not exercise, perform, or offer.

Sec. 11.05. POWER OF COMMISSIONER TO REVOKE CERTIFICATE. The commissioner may issue an order against a foreign savings bank holding a certificate of authority to do business in this state in the same manner as against a domestic savings bank under Chapter 5 of this Act. On failure or refusal of a foreign savings bank to comply with a final order of the commissioner, the commissioner may revoke a certificate of authority held by the savings bank. On revocation of the certificate of authority of a foreign savings bank, an agent



of the savings bank may not transact business in this state, except to receive payments to apply on loan contracts then in effect and to pay withdrawal requests.

**Sec. 11.06. FEDERAL SAVINGS BANKS.** A federal savings bank is not a foreign corporation or foreign savings bank. Unless federal laws or regulations provide otherwise, a federal savings bank and the members of a federal savings bank have all of the rights, powers, privileges, benefits, immunities, and exemptions that are provided by this Act and other laws of this state relating to a savings bank or its members. This provision is in addition to and supplemental to any provision of this Act which by specific reference is applicable to a federal savings bank and its members.

**Sec. 11.07. MERGER OR CONSOLIDATION OF FOREIGN AND DOMESTIC SAVINGS BANKS.** (a) A domestic savings bank may merge or consolidate with a foreign savings bank under a plan adopted by the board of directors of both savings banks and approved by the commissioner. The plan of merger or consolidation must be approved by a majority of the total vote that the members or stockholders of the domestic savings bank are entitled to cast. Approval may be voted at either an annual meeting or at a special meeting called to consider that action. A stockholder of a domestic savings bank that is a capital stock association has the same dissenter's rights as a shareholder of a domestic corporation under the Texas Business Corporation Act.

(b) If presented with a plan of merger or consolidation of a foreign savings bank and a domestic savings bank, the commissioner shall give public notice of the proposed merger or consolidation in each county in which the domestic savings bank has an office and shall give any interested party an opportunity to appear, present evidence, and be heard for or against the proposed plan. A hearing officer designated by the commissioner shall hold the hearing. If a protest is not received on or before the date of hearing, the hearing may be dispensed with by the commissioner or hearing officer. The provisions of the administrative procedure act applicable to a contested case do not apply to an application if the domestic savings bank is considered by the commissioner to be in an unsafe condition, and in that event, the application and all information related to the application are confidential and privileged from public disclosure.

(c) The commissioner shall issue an order denying the proposed plan if the commissioner finds that any of the conditions of Subsection (c) of Section 3.03 of this Act exist. In addition, if the surviving savings bank is the foreign savings bank, the commissioner shall deny the application if:

(1) the laws of the state in which the foreign savings bank has its principal place of business do not permit savings banks of that state to merge or consolidate with a domestic savings bank if the surviving savings bank is the domestic savings bank; or

(2) the foreign savings bank is controlled by a holding company that has its principal place of business in a state the laws of which do not permit savings banks of that state to merge or consolidate with a domestic savings bank if the surviving savings bank is the domestic savings bank.

(d) If a surviving savings bank is a foreign savings bank, the commissioner may enforce any conditions, restrictions, and requirements on the surviving savings bank that could have been enforced by the state in which the foreign savings bank has its principal place of business with respect to a merger or consolidation in that state in which the surviving savings bank is a domestic savings bank.

(e) If the commissioner approves a proposed plan of merger or consolidation, the commissioner shall issue an order approving the merger or consolidation. If the surviving savings bank is the foreign savings bank, the commissioner shall issue and deliver to the surviving savings bank a certificate of authority to do business as a savings bank within this state for a period that expires January 31 of the next calendar year. If the surviving savings bank is the domestic savings bank, it shall continue to operate under the terms of its charter and the laws and rules applicable to a domestic savings bank.

## CHAPTER 12. MISCELLANEOUS PROVISIONS

**Sec. 12.01. EXEMPTION FROM SECURITIES LAWS.** Deposit accounts, certificates, and other evidences of interest in the deposit liability of savings banks subject to this Act and

of federal savings banks are not securities for any purpose under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), and securities of those savings banks other than interest in the deposit liability of the savings banks are not subject to the registration requirements of that Act. A person whose principal occupation is as an officer of a savings bank is exempt from the registration and licensing provisions of The Securities Act with respect to the person's participation in a sale or other transaction involving securities of the savings bank of which the person is an officer.

Sec. 12.02. **ACKNOWLEDGMENTS BY MEMBERS AND EMPLOYEES.** A public officer qualified to take acknowledgments or proofs of written instruments is not disqualified from taking the acknowledgments or proofs of any instrument in writing in which a savings bank or federal savings bank is interested by reason of the officer's membership in or stockholding in or employment by the savings bank.

Sec. 12.03. **CLOSING PLACES OF BUSINESS.** A savings bank may close its place of business at any time the board of directors of the savings bank determines to do so.

Sec. 12.04. **SAVINGS BANKS PROHIBITED FROM ISSUING STOCK OR SHARES NOT AUTHORIZED BY THIS ACT.** A savings bank may not issue any form of stock, share, account, or investment certificate except as permitted by this Act.

Sec. 12.05. **AD VALOREM TAXATION OF PROPERTY OF SAVINGS BANKS.** A domestic or federal savings bank doing business in this state shall render for ad valorem taxation all of its real estate as other real estate is rendered. Personal property of a domestic or federal savings bank is valued as other personal property is valued for assessment in this state and shall be rendered by the savings bank to the appropriate assessing unit or units in the following manner:

(1) furniture, fixtures, equipment, and automobiles shall be rendered where the property is located in the same manner as other similar property; and

(2) the remainder of the personal property of a savings bank shall be rendered as a whole in the city and county where its principal office is located at the value remaining after deducting from the total value of the savings bank's entire assets the following:

- (A) all debts of every kind and character owed by the savings bank;
- (B) all tax-free securities owned by the savings bank;
- (C) the loss reserves and surplus of the savings bank;
- (D) the deposit liability of the savings bank; and
- (E) the appraised value of its furniture, fixtures, and real estate.

Sec. 12.06. **STATE TAXATION OF SAVINGS BANKS.** A domestic or federal savings bank doing business in this state shall be taxed by the state in the same manner and to the same extent as a corresponding savings and loan association.

Sec. 12.07. **INITIATION OF RULEMAKING BY SAVINGS BANKS.** If 20 percent or more of the savings banks subject to this Act petition the commissioner in writing requesting the adoption, amendment, or repeal of a rule, the commissioner shall initiate rulemaking proceedings under Subsection (e), Article 5, Chapter II, The Texas Banking Code (Article 342-205, Vernon's Texas Civil Statutes).

Sec. 12.08. **HEARING PROCEDURES.** (a) Notice of a hearing held under an order issued under Chapter 5 of this Act shall be given to all parties affected by the order. Notice of other hearings held under this Act shall be given to all domestic and federal savings banks in the county where the subject matter of the hearing is or will be situated.

(b) Opportunity shall be afforded any interested party to respond and present evidence and argument on all issues involved in a hearing held under this Act.

(c) On the written request of any interested party, the commissioner shall keep a formal record of the proceedings of a hearing held under this Act.

(d) A decision or order adverse to a party who appeared and participated in a hearing must be in writing and include findings of fact and conclusions of law, separately stated, on all issues material to the decision reached. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(e) A decision or order entered after hearing is final and appealable on the 15th day after the date the decision or order is entered unless a motion for rehearing is filed by a party within that period, and if the motion for rehearing is overruled, the decision or order is appealable after the date the order overruling the motion is entered.

(f) Parties to a hearing shall be notified promptly either personally or by mail of any decision, order, or other action taken in respect to the subject matter of the hearing.

Sec. 12.09. JUDICIAL REVIEW. The administrative procedure act governs judicial review of an act, order, ruling, or decision of the commissioner or a rule adopted under this Act.

Sec. 12.10. PENALTY FOR FAILING TO COMPLY WITH LAW. The commissioner may require a savings bank that knowingly violates or fails to comply with this Act or a rule adopted under this Act to pay not more than \$1,000 a day to the Savings and Loan Department of Texas for each day of the violation or failure after lawful notice of the delinquency by the commissioner. The attorney general may file suit for the collection of the penalty on certification by the commissioner of the failure or refusal of the savings bank to remit the assessed penalty.

Sec. 12.11. APPLICABILITY OF CHAPTER 4, BUSINESS & COMMERCE CODE. A savings bank is subject to and has the benefit of Chapter 4, Business & Commerce Code, with respect to all items paid, collected, settled, negotiated, or otherwise handled for customers of the savings bank.

Sec. 12.12. APPLICABILITY OF OTHER LAW. (a) Except as provided in Subsection (b) of this section, a reference in statutes of this state, including Title 79, Revised Statutes (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), the Government Code, and the Local Government Code or in a rule adopted under the statutes to a "savings and loan association," "savings and loan," or "association" in the context of a savings and loan association is also a reference to a savings bank, as defined in this Act.

(b) Subsection (a) of this section does not apply to this Act, the Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), The Texas Banking Code (Article 342-101 et seq., Vernon's Texas Civil Statutes), or the Penal Code.

Sec. 12.13. EMERGENCY CLOSING OF A SAVINGS BANK. (a) If the officers of a savings bank determine that an emergency that affects or may affect the savings bank's officers or operations exists or is impending, the officers, in the reasonable and proper exercise of their discretion, may determine to not conduct the involved operations or open the savings bank's offices on any business or banking day or, if the savings bank is open, to close the offices or suspend and close the involved operations during the continuation of the emergency. The office or operations closed may remain closed until the officers determine the emergency has ended and for additional time reasonably required to reopen. However, an office or operations may not remain closed for more than 48 consecutive hours, excluding other legal holidays, without the approval of the commissioner. A savings bank closing an office or operations under this section shall give the commissioner prompt notice of its action as conditions permit and by any means available.

(b) In this section, "emergency" means a condition or occurrence that physically interferes with the conducting of normal business at the offices of a savings bank or of particular savings bank operations or that poses an imminent or existing threat to the safety or security of persons, property, or both. In addition to other causes, an emergency may arise as a result of:

- (1) fire, flood, earthquake, hurricane, tornado, wind, rain, or snowstorm;
- (2) labor dispute and strike;
- (3) power failure;
- (4) transportation failure;
- (5) interruption of communication facilities;
- (6) shortage of fuel, housing, food, transportation, or labor;
- (7) robbery or burglary;
- (8) actual or threatened enemy attack;

- (9) epidemic or other catastrophe;
- (10) riot or other civil commotion; or
- (11) any other actual or threatened acts of lawlessness or violence.

(c) A day on which a savings bank or one or more of its operations is closed during all or part of its normal business hours under this section is considered to be a legal holiday for the savings bank to the extent it suspends operations. Liability or loss of rights does not arise on the part of a savings bank or a director, officer, or employee of the savings bank from a closing authorized by this section.

(d) A provision of this section is in addition to and not in substitution for or in limitation of any other provision of this Act or other law of this state or the United States authorizing the closing of a savings bank or excusing the delay by a savings bank in the performance of its duties and obligations because of emergencies or conditions beyond the savings bank's control or otherwise.

Sec. 12.14. **AUTHORIZATION OF DERIVATIVE SUITS.** (a) The commissioner may bring a derivative suit in the right of a savings bank based on an unpursued cause of action if:

- (1) the commissioner determines the savings bank has an unpursued cause of action and that suit on that cause should be brought to protect the interest of the savings bank, the stockholders, members, or creditors of the savings bank or the public interest; and
- (2) the savings bank has not brought suit on the cause before the 30th day after the date on which the commissioner gives notice to the savings bank that the suit should be brought.

(b) Venue of a derivative suit, unless venue is mandatory, is in a district court of Travis County.

(c) The commissioner may employ legal counsel to bring and prosecute a derivative suit. The commissioner may pay counsel from funds appropriated for the operation of the Savings and Loan Department of Texas or may require the savings bank for which the suit is brought to pay the counsel directly or to reimburse the Savings and Loan Department of Texas for the payment. An amount equal to the amount of the proceeds of a judgment on the suit, less unreimbursed costs and expenses, including attorney fees incurred by the Savings and Loan Department of Texas in prosecuting the suit, shall be paid to the savings bank.

Sec. 12.15. **LIABILITIES OF COMMISSIONER AND OTHERS; DEFENSE BY ATTORNEY GENERAL.** The commissioner, a member of the finance commission, a deputy commissioner, an examiner, or any other officer or employee of the Savings and Loan Department of Texas is not personally liable for damages arising from the person's official acts or omissions unless the acts or omissions are corrupt or malicious. The attorney general shall defend an action brought against such a person by reason of the person's official acts or omissions, regardless of whether at the time of the initiation of the action the defendant is an officer or employee of the Savings and Loan Department of Texas.

SECTION 2. Article 2, Chapter I, The Texas Banking Code (Article 342-102, Vernon's Texas Civil Statutes), is amended by amending Subdivisions (12) and (13) and adding Subdivisions (26) and (27) to read as follows:

(12) "State Savings and Loan Association" or "State Association"—Any savings and loan association [~~or savings bank~~] heretofore or hereafter organized under the laws of this State.

(13) "Federal Savings and Loan Association"—Any savings and loan association [~~or savings bank~~] heretofore or hereafter organized under the laws of the United States of America.

(26) "Savings Bank"—Any savings bank organized under or subject to the Texas Savings Bank Act, Section 1, Senate Bill No. 396, Acts of the 73rd Legislature, Regular Session, 1993.

(27) "Federal Savings Bank"—Any savings bank organized under the laws of the United States of America.

SECTION 3. Article 3, Chapter I, The Texas Banking Code (Article 342-103, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 3. FINANCE COMMISSION—GENERAL POWERS. A. There is hereby established and created The Finance Commission of Texas which shall consist of nine (9) members. The Finance Commission shall:

- (1) adopt rules and determine general policies for the regulation of state banks, state associations, *savings banks*, and the consumer credit industry in the state;
- (2) consult and advise the Banking Commissioner, Savings and Loan Commissioner, and Consumer Credit Commissioner on the implementation and enforcement of the rules and policies adopted by the Finance Commission; and
- (3) carry out other duties, powers, and authority as may be conferred by law.

B. The Finance Commission shall make a thorough and intensive study of the Texas banking, savings and loan, *savings bank*, and consumer credit statutes, respectively, with a view to so strengthening said statutes as to attain and maintain the maximum degree of protection to depositors, stockholders, shareholders, and consumers, and shall report every two (2) years to the Legislature by filing with the Clerks of the Senate and the House of Representatives the results of its study, together with its recommendations.

SECTION 4. Section 2, Article 4, Chapter I, The Texas Banking Code (Article 342-104, Vernon's Texas Civil Statutes), is amended to read as follows:

2. Two (2) members of the Finance Commission shall be savings [~~and loan~~] executives. For the purposes of this *article* [~~section~~] a savings [~~and loan~~] executive is a person who:

- (i) has had five (5) years or more executive experience in the seven (7) years next preceding the person's appointment in a State or Federal Savings and Loan Association, a *savings bank*, or a *federal savings bank* in a capacity not lower than cashier;[,] and
- (ii) [~~who~~] at the time of the person's appointment is an officer in a State association or a *savings bank*.

SECTION 5. Section 4, Article 4, Chapter I, The Texas Banking Code (Article 342-104, Vernon's Texas Civil Statutes), is amended to read as follows:

4. The members of the Finance Commission who are not banking executives or savings [~~and loan~~] executives shall be selected by the Governor on the basis of recognized business ability. Those members may not be banking executives, savings [~~and loan~~] executives, or controlling shareholders in a bank, [~~or~~] savings and loan association, or *savings bank*. At least one of those members must be a certified public accountant.

SECTION 6. Article 14, Chapter I, The Texas Banking Code (Article 342-114, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 14. SAVINGS AND LOAN/SAVINGS BANK RULES AND REGULATIONS—LOANS AND INVESTMENTS—ADVISORY POWERS. The Finance Commission, through resolutions, 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 associations and *savings banks*, and may authorize State associations and *savings banks* to invest their funds in any manner and to the same extent which said association or *savings banks* could invest such funds under existing or any future law, rule or regulation were they organized and operating as a Federal Savings and Loan Association or *Federal savings bank* under the laws of the United States, provided, however, that this authority shall not be construed in any wise to confer authority to abridge, or diminish or limit any rights or powers specifically given to State associations or *savings banks* by the statutory laws of this State. In addition to such powers as may be conferred upon the Finance Commission by this Act, [~~or by~~] the Savings and Loan Act of Texas, or the *Texas Savings Bank Act*, as amended, the Finance Commission shall have the following duties:

(a) When in the judgment of the Finance Commission, protection of investors in State associations or *savings banks* requires additional regulations or limitations, to promulgate such additional rules and regulations as will in its judgment prevent State associations or *savings banks* from concentrating an excessive or unreasonable portion of their resources in any particular type or character of loan or security authorized by the Texas Savings and Loan Act or the *Texas Savings Bank Act*.

(b) When in the judgment of the Finance Commission, establishment of standards or changes in existing standards for investment are necessary, to establish standards through rules and regulations for investments by State associations *or savings banks*, which standards may also establish a limit in the amount which State associations *or savings banks* may invest in any particular type or character of investment to an amount or percentage based upon assets or net worth.

(c) To advise with the Savings and Loan Commissioner as to the forms to be prescribed for the filing of the annual statements with the Savings and Loan Department and the forms to be prescribed for the publication of the annual financial statements by State associations *and savings banks*.

(d) To confer with the Savings and Loan Commissioner, *the Chairman of the Federal Deposit Insurance Corporation, and the District Director of the Office of Thrift Supervision* [~~and with the President of the regional Federal Home Loan Bank of the district in which State associations are members~~] on general and special business and economic conditions affecting State associations *and savings banks*.

(e) To request information and to make recommendations with respect to matters within the jurisdiction of the Savings and Loan Commissioner as relating to the savings and loan *and savings bank* business, including recommendations as to legislation affecting such institutions, providing, that no information regarding the financial condition of any State savings and loan association *or savings bank* obtained through examination or otherwise shall be divulged to any member of the Finance Commission, nor shall any member of the Finance Commission be given access to the files and records of the Department appertaining thereto; provided, further, however, that the Commissioner may disclose to the Finance Commission any file or record pertinent to any hearing or matter pending before the Finance Commission.

SECTION 7. Sections (a), (b), (c), (d), (g), (h), (i), and (k), Article 5, Chapter II, The Texas Banking Code (Article 342-205, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) By and with the advice and consent of the Senate, the Finance Commission of Texas, by at least five (5) affirmative votes, shall elect a Savings and Loan Commissioner who shall serve at the pleasure of the Finance Commission and who shall be an employee of said Commission and subject to its orders and direction. The Savings and Loan Commissioner shall have had not less than seven (7) years experience in the executive management of a savings and loan association *or savings bank* or in savings and loan *or savings bank* supervision. The Savings and Loan Commissioner shall receive such compensation as is fixed by the Finance Commission. The compensation shall be paid from funds of the Savings and Loan Department.

(b) The Savings and Loan Commissioner, subject to the approval of the Finance Commission, shall appoint one or more Deputy Savings and Loan Commissioners, one of which shall have the same qualifications required of the Savings and Loan Commissioner and shall be designated by the Savings and Loan Commissioner to be vested with all of the powers and perform all of the duties of the Savings and Loan Commissioner during the absence or inability of the Savings and Loan Commissioner. The Savings and Loan Commissioner may also appoint a Hearing Officer or Officers to conduct such investigations or public hearings as may be required by law of the Savings and Loan Commissioner. The Hearing Officer or Officers shall be vested for the purpose of such investigations or public hearings with the power and authority as the Savings and Loan Commissioner would have if he were personally conducting such investigation or public hearing, provided that the Hearing Officer or Officers shall not be authorized to make any order upon the final subject matter of such investigation or hearing; and provided, further, that the record of any investigation or public hearing conducted before the Hearing Officer may be considered by the Savings and Loan Commissioner in the same manner and to the same extent as evidence that is adduced before him personally in any such proceeding. The Savings and Loan Commissioner shall also appoint Savings and Loan *and Savings Bank* Examiners. Each Deputy Savings and Loan Commissioner, the Savings and Loan *and Savings Bank* Examiners, each Hearing Officer, and all other officers and employees of the Savings and Loan Department shall receive such compensation as is fixed by the Finance Commission which shall be paid from the funds of the Savings and Loan Department.

(c) The Savings and Loan Commissioner, each Deputy Savings and Loan Commissioner, each Hearing Officer, each Savings and Loan *and Savings Bank* Examiner, and every other officer and employee of the Savings and Loan Department specified by the Finance Commission, shall, before entering upon the duties of his office, take an oath of office and make a fidelity bond in the sum of Ten Thousand Dollars (\$10,000) payable to the Governor of the State of Texas, and his successors in office, in individual, schedule or blanket form, executed by a surety appearing upon the list of approved sureties acceptable to the United States Government. Each bond required under this Article shall be in the form approved by the Finance Commission. The premiums for such bonds shall be paid out of the funds of the Savings and Loan Department.

(d) Upon the appointment and qualification of a Savings and Loan Commissioner under this Act such Savings and Loan Commissioner shall in person or by and through the Deputy Savings and Loan Commissioner, Savings and Loan *and Savings Bank* Examiners, or other officers of the Savings and Loan Department, supervise and regulate, in accordance with the rules and regulations promulgated by the Savings and Loan Commissioner together with the Finance Commission, all savings and loan associations *and savings banks* doing business in this State (except Federal Savings and Loan Associations or *Federal Savings Banks* organized and existing under Federal Law).

(g) The Savings and Loan Commissioner shall attend each meeting of the Finance Commission at which matters relating to savings and loan associations or *savings banks* will be considered, but he shall not vote.

(h) The Savings and Loan Commissioner and the Finance Commission shall establish reasonable and necessary fees for the administration of the Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes) *and the Texas Savings Bank Act* and support of the Finance Commission as provided by Article 11C, Chapter I, of this Code. The Savings and Loan Commissioner shall collect all fees, penalties, charges and revenues required to be paid by savings and loan associations *and savings banks* and shall from time to time as directed by the Finance Commission submit to such Commission a full and complete report of the receipts and expenditures of the Savings and Loan Department, and the Finance Commission may from time to time examine the financial records of the Savings and Loan Department or cause them to be examined. In addition, the financial transactions of the Savings and Loan Department are subject to audit by the state auditor in accordance with Chapter 321, Government Code, and the actual costs of such audits shall be paid to the State Auditor from the funds of the Savings and Loan Department. Notwithstanding anything to the contrary contained in any other law of this State, beginning September 1, 1985, all sums of money paid to the Savings and Loan Department from all sources shall be deposited in the State Treasury to the credit of a special fund to be known as the Savings and Loan Department Expense Fund and may be used only for the expenses incurred by the Savings and Loan Department and Finance Commission. All expenses incurred by the Savings and Loan Department shall be paid only from such fund. The Finance Commission shall promulgate and adopt such rules and regulations as may be necessary to coordinate the operation of the Savings and Loan Department with the operation of the Banking Department and the Office of Consumer Credit Commissioner.

(i) Insofar as the provisions of this Section may conflict with any other provisions of The Texas Banking Code of 1943, as amended, or Senate Bill No. 111, Acts 1929, 41st Legislature, page 100, Chapter 61, as amended, or the Texas Savings and Loan Act of 1963, Chapter 113, Acts 58th Legislature, 1963, page 269, et seq., or *the Texas Savings Bank Act*, as amended, the provisions of this Act shall control; except that the terms "Savings and Loan," and "Savings and Loan Association," as used herein, are intended to and shall have the same meaning as the terms "Building and Loan" and "Building and Loan Association" as used in said Statutes.

(k) An officer or employee of the Savings and Loan Department may not be an officer, employee, or paid consultant of a trade association in the savings and loan industry or *the savings bank industry*.

SECTION 8. Section 3, Article 9, Chapter VI, The Texas Banking Code (Article 342-609, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. In this article, “financial institution” means a state or national bank, [or] state or federal savings and loan association, *or state or federal savings bank* maintaining an office, branch, or agency office in this state or otherwise engaged in the business of lending money or extending credit in this state.

SECTION 9. Section 4, Article 5, Chapter VII, The Texas Banking Code (Article 342–705, Vernon’s Texas Civil Statutes), is amended to read as follows:

Sec. 4. In this article “financial institution” means a state or national bank, [or] state or federal savings and loan association, *or state or federal savings bank* maintaining an office, branch, or agency office in this state or otherwise engaged in the business of lending money or extending credit in this state.

SECTION 10. Subsection (a), Section 5, Article 5, Chapter VII, The Texas Banking Code (Article 342–705, Vernon’s Texas Civil Statutes), is amended to read as follows:

(a) This article does not restrict or apply to amendment of a depository contract, addition of a new term or provision to a depository contract, or disclosure or production of deposits or of records of accounts and other *financial institution* [bank] records if the amendment, addition, or disclosure is made under or in substantial compliance with applicable federal law, including regulations. This article does not restrict or apply to the use or disclosure by a *financial institution* [bank] of information or records pertaining to deposits, accounts, or *financial institution* [bank] transactions if the use or disclosure is made in good faith in the usual course of the financial business of the *financial institution* [bank], is made by the *financial institution* [bank] in the course of the litigation affecting its interests, or is made with express or implied consent of the depositor or customer. This article does not apply to the investigation or prosecution of criminal offenses.

SECTION 11. Subsection (a), Section 32.71, Penal Code, is amended to read as follows:

(a) An officer, director, member of any committee, clerk, or agent of any savings and loan association *or savings bank* in this state commits an offense if the person embezzles, abstracts, or misapplies money, funds, or credits of the association *or savings bank*, issues or puts into circulation any warrant or other order without proper authority, issues, assigns, transfers, cancels, or delivers up any note, bond, draft, mortgage, judgment, decree, or other written instrument belonging to the association *or savings bank*, certifies to or makes a false entry in any book, report, or statement of or to the association *or savings bank*, with intent to deceive, injure, or defraud the association *or savings bank* or a member of the association *or savings bank* for the purpose of inducing any person to become a member of the association *or savings bank* or to deceive anyone appointed to examine the affairs of the association *or savings bank*.

SECTION 12. Subsection (a), Section 32.72, Penal Code, is amended to read as follows:

(a) Any person commits an offense if the person for the purpose of influencing the actions of an association *or savings bank* or its employees, agents, or representatives or for the purpose of influencing the actions of The Finance Commission of Texas, the savings and loan commissioner, or employees, agents, or representatives of the Savings and Loan Department of Texas, knowingly:

(1) removes, mutilates, destroys, or conceals a paper, book, or record of a savings and loan association *or savings bank* or of the savings and loan commissioner or the Savings and Loan Department of Texas for the purpose of concealing a fact or suppressing evidence;

(2) makes, passes, alters, or publishes a false, counterfeit, or forged instrument, paper, document, statement, or report to a savings and loan association *or savings bank* or to the savings and loan commissioner or the Savings and Loan Department of Texas; or

(3) substantially overvalues land, property, security, an asset, or income in connection with a transaction with a savings and loan association *or savings bank* without substantiation, justification, or supporting documentation generally accepted by appraisal standards.

SECTION 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be



suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on March 8, 1993: Yeas 31, Nays 0; the Senate concurred in House amendment on May 28, 1993: Yeas 31, Nays 0; passed the House, with amendment, on May 26, 1993, by a non-record vote.

Approved June 19, 1993.

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