

CHAPTER 321

S.B. No. 817

AN ACT

relating to regulation of private banks.

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

SECTION 1. Article 1, Chapter I, The Texas Banking Code of 1943 (Article 342-101, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 1. SCOPE OF ACT—SHORT TITLE. This code provides a complete system of laws governing the organization, operation, supervision and liquidation of state banks and private banks, and to the extent indicated by the context, governing ~~[private banks,]~~ foreign bank agencies[,] and national banks domiciled in this State; as authorized by Article 16, Section 16 of the Constitution of the State of Texas, and as provided by Article 3, Section 43 of the Constitution of the State of Texas. This Act, and all amendments thereto, may be cited as "The Texas Banking Code ~~[of 1943]."~~

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

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

"Bank"—*A state, private, or national bank domiciled in this State.*

"Code"—The Texas Banking Code ~~[of 1943].~~

"Banking Department"—The Banking Department of Texas.

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

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

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

"Commissioner"—The Banking Commissioner of Texas.

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

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

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

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

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

"Director, officer or employee"—Director, officer or employee of a state bank or an individual acting in a comparable capacity for a private bank.

"Board"—Board of directors of a state bank or a person or group of persons acting in a comparable capacity for a private bank.

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

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

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

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

“City”—City, village, town, or similar community.

“Capital”—The common capital stock.

“Chapters and Articles”—The Chapters and articles of this Code.

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

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

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

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

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

- (1) has its principal executive office in this State;
- (2) is not owned or controlled, directly or indirectly, by a bank holding company that has its principal executive office outside this State;
- (3) owns or controls, directly or indirectly:
 - (A) state banks or national banks domiciled in this State holding not less than 50 percent of the total deposits, as defined by Section 2[3], Federal Deposit Insurance Act (12 U.S.C. Section 1813), held by all banks that it owns or controls, directly or indirectly; or
 - (B) a state bank or national bank domiciled in this State and owned or controlled, directly or indirectly, such a bank on July 15, 1986; and
- (4) either:
 - (A) owns or controls, directly or indirectly, a state bank or national bank domiciled in this State and owned or controlled, directly or indirectly, such a bank on July 15, 1986; or
 - (B) acquires after July 15, 1986, ownership or control, direct or indirect, of any state bank or national bank in this State and at the time it becomes a bank holding company the only bank or banks owned or controlled by it, directly or indirectly, are located in this State.

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

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

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

SECTION 3. Article 13, Chapter I, The Texas Banking Code of 1943 (Article 342-113, Vernon’s Texas Civil Statutes), is amended to read as follows:

Art. 13. BANKING SECTION—RULES AND REGULATIONS—LOANS AND INVESTMENTS—INSURANCE—PRESERVATION OF BOOKS AND RECORDS—AFFAIRS TRANSACTED BY NATIONAL BANKS—DETERMINATION OF INCIDENTAL POWERS. The Banking Section, through resolution adopted by not less than four

affirmative votes, may promulgate general rules and regulations not inconsistent with the Constitution and Statutes of this State, and from time to time amend the same, which rules and regulations shall be applicable alike to all state banks *and, where indicated, to all private banks* to effect the following ends and purposes:

1. To prevent state banks from concentrating an excessive or unreasonable portion of their resources in any particular type or character of investment or in any single line of credit under any exception to Article 7, of Chapter V of this Code, thereby preventing the solvency or liquidity of such banks depending to an undue extent upon such type or character of investment or single line of credit.

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

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

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

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

SECTION 4. Subsection (c), Section 6, Article 15, Chapter I, The Texas Banking Code of 1943 (Article 342-115, Vernon's Texas Civil Statutes), is amended to read as follows:

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

SECTION 5. Section 10, Article 15, Chapter I, The Texas Banking Code of 1943 (Article 342-115, Vernon's Texas Civil Statutes), is amended to read as follows:

10. The State Banking Board shall keep an information file about each complaint filed with the Board relating to a State *or private* bank. If a written complaint is filed with the Board relating to a State *or private* bank, the Board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 6. Article 7, Chapter II, The Texas Banking Code of 1943 (Article 342-207, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 7. COMMISSIONER—GENERAL POWERS—DUTIES—LIABILITIES OF COMMISSIONER AND OTHERS—DEFENSE BY ATTORNEY GENERAL. The Commissioner shall supervise and shall regulate, as provided in this Code, all state *and private* banks and shall enforce the provisions of this Code in person or through the Deputy Commissioner, the Departmental Examiner or any examiner. The Commissioner, each member of the Finance Commission, each member of the State Banking Board, the Deputy Commissioner, the Departmental Examiner, the Liquidating Supervisor, each examiner, assistant examiner, and special agent, the Building and Loan Supervisor, each building and loan examiner, and each other officer and employee of the State Banking

Department shall not be personally liable for damages occasioned by his official acts or omissions except when such acts or omissions are corrupt or malicious. The Attorney General shall defend any action brought against any of the above mentioned officers or employees by reason of his official act or omission, whether or not at the time of the institution of the action the defendant has terminated his service with the Department.

SECTION 7. Article 8, Chapter II, The Texas Banking Code of 1943 (Article 342-208, Vernon's Texas Civil Statutes), is amended to read as follows:

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

SECTION 8. Article 8a, Chapter II, The Texas Banking Code of 1943 (Article 342-208a, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 8a. EXAMINATION OF NONBANKING AFFILIATES. The Commissioner may examine the affiliates of a state *or private* bank to the extent it is necessary to safeguard the interest of depositors, creditors, and stockholders of the bank and to enforce the provisions of The Texas Banking Code [~~of 1943~~]. The Commissioner may conduct the examination in conjunction with any examination of the state *or private* bank or affiliate conducted by any other state or federal regulatory authority. For the purpose of this Article, "affiliate" means any bank holding company of which the state *or private* bank is a subsidiary and any nonbanking subsidiary of that bank holding company, as "subsidiary" is defined by Section 2 of the federal Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1841(d), as amended).

SECTION 9. Article 10, Chapter II, The Texas Banking Code of 1943 (Article 342-210, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 10. INFORMATION CONFIDENTIAL—PRIVILEGED—EXCEPTIONS. Subject to the provisions of Section 5 of Chapter 183 of the Forty-fourth Legislature of Texas (1935), page 461 (Article 489b, Section 5), and any other statutory provision of this State, all information obtained by the Banking Department relative to the financial condition of state *or private* banks other than call reports and profit and loss statements, whether obtained through examination or otherwise, except published statements, and all files and

records of said Department relative thereto shall be confidential, and shall not be disclosed by the Commissioner or any officer or employee of said Department. Further provided that no such information shall be divulged to any member of the Finance Commission, nor shall any member of the Finance Commission be given access to such files and records of the Banking Department; provided, however, that the Commissioner may disclose to the Finance Commission, or either section thereof, or to the State Banking Board information, files and records pertinent to any hearing or matter pending before such Commission or either section thereof or such Board. Further provided that upon request, the Commissioner may disclose to a Federal Reserve Bank any information relative to its members, and shall permit it access to any files and records or reports relating to its members. Further provided that the Commissioner may, in his discretion, if he deems it necessary or proper to the enforcement of the laws of this State or the United States, and to the best interest of the public, divulge such information to any other department of the State or National Government, or any agency or instrumentality thereof.

SECTION 10. Article 11, Chapter II, The Texas Banking Code of 1943 (Article 342-211, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 11. VIOLATION OF DUTY BY COMMISSIONER AND OTHERS—PENALTY. If the Commissioner or any officer or employee of the Banking Department shall give advance notice of any call to be made pursuant to Article 9 of this chapter; or divulge information or permit access to any file or record of the Banking Department in violation of Article 10 of this chapter; or knowingly be or become indebted to, or financially interested in, any state *or private* bank, directly or indirectly; or purchase any asset belonging to any state *or private* bank in the hands of the Commissioner for purposes of liquidation, he shall be deemed guilty of a misdemeanor in office, and shall upon conviction be fined not exceeding Two Hundred Dollars (\$200), and forfeit his office or employment.

SECTION 11. Section A, Article 1a, Chapter IV, The Texas Banking Code of 1943 (Article 342-401a, Vernon's Texas Civil Statutes), is amended to read as follows:

A. No person may acquire any voting security of a state bank or of any corporation or other entity owning voting securities of a state bank if, after the acquisition, the person would own or possess the power to vote twenty-five per cent (25%) or more of the voting securities of the bank *nor may any person acquire an equivalent interest in a private bank* unless an application is filed with the Commissioner for his review of the proposed transaction and for his action, if any, as provided in this Article.

SECTION 12. Article 11, Chapter IV, The Texas Banking Code of 1943 (Article 342-411, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 11. OFFICERS—TRANSFER OF SECURITIES—BILLS PAYABLE—REDISCOUNTS—SALE OF NOTES. No officer of a state *or private* bank shall endorse, pledge, assign, transfer, rediscount or in anywise dispose of any note, bond, security or other obligation held by the bank, nor create any bills payable, unless he shall have previously been duly authorized to do so by the board of directors, as reflected by the minutes of its meeting.

SECTION 13. Section 1, Article 11a, Chapter IV, The Texas Banking Code of 1943 (Article 342-411a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. In this article, "eligible person" means a person who is an officer, director, or employee of a state *or private* bank or national bank domiciled in the state with fewer than five hundred (500) shareholders or of a bankholding company with fewer than five hundred (500) shareholders that owns the majority of the voting shares of a bank domiciled in the state.

SECTION 14. Sections 1, 2, 3, and 5, Article 12, Chapter IV, The Texas Banking Code of 1943 (Article 342-412, Vernon's Texas Civil Statutes), are amended to read as follows:

1. If the Commissioner finds that an officer, director or employee of a State *or private* bank, or the State *or private* bank itself acting through any authorized person, has committed any of the following violations or practices:

- (a) violates the provisions of this Code or any other law or regulation applicable to State *or private* banks; or
- (b) refuses to comply with the provisions of this code or any other law or regulation applicable to State *or private* banks; or
- (c) wilfully neglects to perform his duties, or commits a breach of trust or of fiduciary duty.
- (d) Commits any fraudulent or questionable practice in the conduct of the bank's business that endangers the bank's reputation or threatens its solvency; or
- (e) refuses to submit to examination under oath; or
- (f) conducts business in an unsafe or unauthorized manner; or
- (g) violates any conditions of its charter or of any agreement entered with the Banking Commissioner or the Banking Department; then in such event the Commissioner shall give notice in writing to such bank and the offending officer, director or employee, stating the particular violations or practices complained of, and the Commissioner shall call a meeting of the directors of said bank and lay before them such findings and demand a discontinuance of such violations and practices as have been found.

2. If the Commissioner shall find that an order to cease and desist from such actions is necessary and in the best interests of the bank involved and its depositors, creditors and stockholders, then at the directors' meeting above provided or within thirty (30) days thereafter the Commissioner may serve on the State *or private* bank, its board of directors, and any offending officers, directors or employees, a written order to cease and desist from the violations and practices enumerated therein and to take such affirmative action as may be necessary to correct the conditions resulting from such violations or practices. Said cease and desist order shall be effective instanter if the Commissioner finds that immediate and irreparable harm is threatened to the bank, its depositors or stockholders; otherwise, said order shall state the effective date, not less than ten (10) days after delivery or mailing of the notice thereof. Unless the bank or directors shall file a notice of appeal with the Banking Section of the Finance Commission within ten (10) days after such delivery or mailing of notice, whichever is the case, the order shall be final. A copy of said order shall be entered upon the minutes of the directors, who shall thereafter certify to the Commissioner in writing that each has read and understood the order.

3. If the Commissioner subsequently finds by examination or other credible evidence that the offending officer, director or employee has continued such violations or practices as previously charged and found by the Commissioner, after notice and demand made under Paragraph 1 above, and further finds that removal from office is necessary and in the best interests of such bank and its depositors, creditors and stockholders, then the Commissioner may serve such officer, director or employee with an order of removal from office. Said order shall state the grounds for removal with reasonable certainty and shall state the effective date of removal, not less than ten (10) days after delivery or mailing of the notice thereof. Unless the bank, the directors or the person removed shall file a notice of appeal with the Banking Section of the Finance Commission within ten (10) days after such delivery or mailing of notice, whichever is the case, the order of removal shall be effective and final and said person shall thereafter be prohibited from further holding office or employment by, or participating in the affairs of, the said State *or private* bank. A copy of said order shall be entered upon the minutes of the directors, and an officer shall acknowledge receipt of such order and certify to the Commissioner that such person has been removed from office.

5. After a cease and desist order or an order of removal becomes effective and final, should a State *or private* bank or its board of directors or any duly authorized officer of said bank fail or refuse to comply with such an order, then the Commissioner may, upon notice, assess a penalty against said State *or private* bank in an amount not to exceed Five Hundred Dollars (\$500) per day for each day the bank is in violation of said order of the Commissioner or the Banking Section of the Finance Commission. Failure to remit any penalty so assessed shall subject the bank to a suit for collection by the Attorney General of Texas to be instituted in the District Court of Travis County, Texas. In addition to the remedy above provided the Attorney General of Texas, upon the relation

of the Banking Commissioner, may bring suit in the District Court of Travis County, Texas, against any bank in violation of the final orders of the Commissioner or the Banking Section to enjoin the further violation of said orders and the violations and practices charged by the Commissioner as the grounds for such orders.

SECTION 15. Article 13, Chapter IV, The Texas Banking Code of 1943 (Article 342-413, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 13. OFFICERS, EMPLOYEES, AGENTS—EMBEZZLEMENT, ABSTRACTION AND MISAPPLICATION—PENALTY. Any officer, employee or agent of a state *or private* bank who embezzles, fraudulently abstracts or wilfully misapplies money, funds, credit or other asset of such bank shall, upon conviction, be fined not exceeding Five Thousand Dollars (\$5,000), or confined in the penitentiary not more than ten (10) years, or both.

SECTION 16. Article 14, Chapter IV, The Texas Banking Code of 1943 (Article 342-414, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 14. OFFICERS, EMPLOYEES, DIRECTORS—FALSE ENTRIES AND STATEMENTS—PENALTY. Any officer, director or employee of a state *or private* bank who knowingly makes a false entry upon the books or records or in any report or statement of such bank, or knowingly gives a false answer to any question propounded to him while being examined under oath by the Commissioner, Deputy Commissioner, Departmental Examiner, or any Examiner, shall, upon conviction, be fined not exceeding Five Thousand Dollars (\$5,000), or confined in the penitentiary not more than ten (10) years, or both.

SECTION 17. Article 15, Chapter IV, The Texas Banking Code of 1943 (Article 342-415, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 15. OFFICERS, DIRECTORS, EMPLOYEES, STOCKHOLDERS—DESTRUCTION OF BANK RECORDS—PENALTY. Any officer, director, employee or stockholder of a state *or private* bank who, for the purpose of concealing any fact or information from the Banking Commissioner, Deputy Commissioner, Departmental Examiner or any Examiner, or for the purpose of suppressing any evidence material to any pending or anticipated suit or legal proceeding, abstracts, removes, destroys, or conceals any book or record of such bank shall, upon conviction, be fined not exceeding Five Thousand Dollars (\$5,000), or confined in the penitentiary not more than five (5) years, or both. Destruction or disposition of any book or record of a state *or private* bank after the period which it is required to be preserved by any rule or regulation of the Banking Section under Article 13 of Chapter I shall raise a rebuttable presumption that this article has not been violated.

SECTION 18. Article 16, Chapter IV, The Texas Banking Code of 1943 (Article 342-416, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 16. OFFICERS, EMPLOYEES—CERTIFICATION OF CHECK WITHOUT FUNDS—PENALTY. Any officer or employee of a state *or private* bank who certifies any check drawn upon such bank, if the drawer does not have sufficient credit in his checking account to pay such check, unless he acts in good faith with reason to believe that the credit is sufficient, shall, upon conviction, be fined not exceeding Five Thousand Dollars (\$5,000), or confined in the penitentiary not more than five (5) years, or both.

SECTION 19. Article 17, Chapter IV, The Texas Banking Code of 1943 (Article 342-417, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 17. OFFICERS, DIRECTORS AND EMPLOYEES—ACCEPTING BONUSES—PENALTY. Any officer, director or employee of a state *or private* bank who demands, or directly or indirectly receives a bonus, commission or other consideration on account of the making of a loan or investment or the purchase of any asset by such bank shall, upon conviction, be fined not exceeding Five Thousand Dollars (\$5,000), or confined in the penitentiary not more than five (5) years, or both.

SECTION 20. Article 1, Chapter VIII, The Texas Banking Code of 1943 (Article 342-801, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 1. EXCLUSIVE METHODS OF LIQUIDATION. The methods of liquidation of state *or private* banks as provided for in this Code shall be exclusive and no state *or private* bank shall make an assignment for the benefit of creditors, nor shall any court appoint a receiver for any state *or private* bank. Provided, however, nothing in this

article shall prohibit the liquidation of a state bank by The Federal Deposit Insurance Corporation as provided in Article 489b, Acts 1935, Forty-fourth Legislature of Texas, Page 459, Chapter 183.

SECTION 21. Subsection (a), Section 1, Article 1a, Chapter VIII, The Texas Banking Code of 1943 (Article 342-801a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) In respect of a bank, "unsafe condition" shall mean and include, and the conditions to which this article is applicable include, but are not limited to, any one or more of the following circumstances or conditions.

- (1) if a bank's capital is impaired, or impairment of capital is threatened, or
- (2) if a bank violates the provisions of this code or any other law or regulation applicable to State *or private* banks, or
- (3) if a bank conducts any fraudulent or questionable practice in the conduct of the bank's business that endangers the bank's reputation or threatens its solvency, or
- (4) if a bank conducts business in an unsafe or unauthorized manner, or
- (5) if a bank violates any conditions of its charter or any agreement entered with the Banking Commissioner or the Banking Department.

SECTION 22. Article 2, Chapter VIII, The Texas Banking Code of 1943 (Article 342-802, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2. VOLUNTARY LIQUIDATION OF SOLVENT STATE AND PRIVATE BANK—CANCELLATION OF CHARTER—RESUMPTION OF BUSINESS PROHIBITED. A solvent state *or private* bank may be closed and liquidated upon the written consent or vote of the owners of record of two thirds of its capital, which consent, or the resolution adopted by the stockholders, shall specify the date when such bank is to be closed and shall designate one or more individuals to act as the liquidating agent, who shall conduct the liquidation under the supervision of the board of directors, after giving suitable bond as prescribed by said board and approved by the Commissioner. Prior to the closing of such state *or private* bank, the directors shall file with the Commissioner a transcript of the proceedings authorizing the closing of the bank. Notice to its depositors and creditors to present their claims shall be published once a week for thirteen (13) weeks, beginning within ten (10) days after the closing of the bank, in a newspaper of general circulation published in the county of the bank's domicile, or if no such newspaper is published in said county, in an adjacent county. Upon presentment of lawful claims, the bank shall pay its depositors and creditors, provided that such payment may be effected through a disbursing agent as authorized under Article 10 of Chapter 3 of this Code. The liquidating agent shall make a written report to the stockholders at each annual meeting, a copy of which, signed and sworn to by the liquidating agent, shall be filed with the Commissioner. The stockholders at any regular or special meeting may remove the liquidating agent and name a successor. The Commissioner may from time to time examine the liquidating bank and may, if the depositors and creditors are not paid upon presentment of their lawful claims, or if, prior to the payment of all depositors and creditors, he finds any condition which would authorize the closing of the bank were it not in voluntary liquidation, take possession of the assets and liquidate the same in the manner herein provided for the liquidation of insolvent state *or private* banks.

Upon the expiration of six (6) months from the first publication of notice as above provided, the bank shall file with the Commissioner an affidavit sworn to by a majority of the qualified directors stating that all depositors and creditors who have presented their claims have been paid the amounts due them, and listing those depositors and creditors who have not presented their claims, giving their addresses as shown by the books of the bank and the amounts respectively due each. Such affidavit shall be accompanied by a publisher's certificate showing publication of notice as above provided, and by a sum equal to the aggregate amount due the non-claiming depositors and creditors. The Commissioner shall hold such money for the benefit of said depositors and creditors in the manner provided in Article 15 of this Chapter.

At any time after the filing of such affidavit, the board of directors may distribute the remaining assets among the shareholders in proportion to their ownership of stock of the

bank and shall thereafter file with the Commissioner an affidavit sworn to by a majority of the qualified directors showing such distribution. The filing of such affidavit and the approval thereof by the Commissioner shall have the effect of cancelling the charter of the bank without the necessity of any judicial action.

No state or private bank which has been closed pursuant to the provisions of this article shall resume business or reopen without the prior written consent of the Commissioner.

SECTION 23. Article 3, Chapter VIII, The Texas Banking Code of 1943 (Article 342-803, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 3. CLOSING STATE OR PRIVATE BANK—BY COMMISSIONER—BY DIRECTORS. Whenever the Commissioner, through examination, finds that the interests of depositors and creditors of a state or private bank are seriously jeopardized through its insolvency or imminent insolvency and that it is to the best interest of such depositors and creditors that the bank be closed and its assets liquidated, he may close and liquidate the bank, unless its board of directors close the bank and place it in his hands for liquidation.

SECTION 24. Article 4, Chapter VIII, The Texas Banking Code of 1943 (Article 342-804, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 4. POSTING OF NOTICE—CREATION OF LIENS, TRANSFERS AND PAYMENT AFTER CLOSING. Immediately after the closing of any state or private bank by its directors or by the Commissioner under the provisions of Article 3 of this chapter, the Commissioner shall place an appropriate sign to that effect at the main entrance of the bank, and thereafter no judgment lien, attachment lien or other voluntary lien shall attach to any asset of said bank, nor shall the directors, officers or agents of such bank thereafter have authority to act for or on behalf of said bank or to convey, transfer, assign, pledge, mortgage or encumber any asset thereof, and any attempt by any officer, director or agent to transfer, assign, convey, mortgage or pledge any asset of the bank or to create any lien thereon or in any manner to prefer any depositor or creditor of the bank after the posting of such notice or in contemplation thereof shall be void. The Commissioner immediately after posting the notice at the entrance of such bank shall advise its correspondent banks of its closing. No correspondent shall pay any item drawn on the account of the closed bank which is presented for payment after the receipt of such advice, unless the same has been previously certified.

SECTION 25. Article 4a, Chapter VIII, The Texas Banking Code of 1943 (Article 342-804a, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 4a. PRIORITY OF CLAIMS—PAYMENT. On liquidation of a state or private bank claims for payment have the following priority:

- (1) obligations incurred by the Commissioner, fees and assessments due to the Department, and expenses of liquidation, all of which may be covered by a proper reserve of funds;
- (2) claims of depositors having an approved claim against the general liquidating account of the bank;
- (3) claims of general creditors having an approved claim against the general liquidating account of the bank;
- (4) claims otherwise proper that were not filed within the time prescribed by this Code;
- (5) approved claims of subordinated creditors; and
- (6) claims of stockholders of the bank.

SECTION 26. Article 5, Chapter VIII, The Texas Banking Code of 1943 (Article 342-805, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 5. CONTEST OF LIQUIDATION. At any time within two (2) days, excluding legal holidays for banks, after the Commissioner has closed any state or private bank under the provisions of Article 3 of this Chapter, such bank, acting through its directors, may sue in the district court of the bank's domicile to enjoin the Commissioner from liquidating such bank, and the court, or the judge thereof if in vacation, may, without notice or hearing, restrain the Commissioner from liquidating the assets of such bank pending hearing on the merits, and shall, in that event instruct the Commissioner to hold

the assets of such bank in his possession pending final disposition of such suit. The Commissioner shall thereupon refrain from liquidating such assets, provided, however, the Commissioner may, with the approval of the district judge, take such action as may be necessary or proper to prevent loss or depreciation in the value of the assets. The court shall, as soon as possible, hear the suit upon its merits and shall enter a judgment (1), enjoining the Commissioner from liquidating the assets of such bank, or (2) refusing such injunction. Appeal shall lie from such judgment as in other civil cases, but the Commissioner, irrespective of the character of judgment entered by the trial court or any supersedeas bond filed, shall retain possession of the assets of such bank pending final disposition on appeal.

SECTION 27. Article 6, Chapter VIII, The Texas Banking Code of 1943 (Article 342-806, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 6. INVENTORY OF ASSETS—CUSTODIA LEGIS—JURISDICTION. Promptly after the Commissioner has acquired possession of the assets of a state *or private* bank for liquidation, he shall prepare and file in the office of the district clerk of the county of the bank's domicile an inventory of such assets, and the clerk shall assign a cause number to the proceedings so instituted. The assets of the bank shall be deemed to be in the custody of the court in which such proceedings are pending and all suits and orders provided for under this chapter shall be deemed to be in the nature of interventions or orders in said proceedings, of which suits and orders said court shall have exclusive jurisdiction. Provided, however, that during vacation of such court, the judge thereof shall be authorized to enter any of such orders and to conduct any hearing incident thereto.

SECTION 28. Article 7, Chapter VIII, The Texas Banking Code of 1943 (Article 342-807, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 7. RESUMPTION OF BUSINESS—REORGANIZATION. No state *or private* bank which has been closed under the provisions of Article 3 of this Chapter shall be reopened unless the contest provided for under Article 5 of this chapter is finally determined adversely to the Commissioner, or unless the Commissioner, acting under order of the district court, shall authorize such reopening by a certificate under the seal of his office. The Commissioner may in such certificate place such limitations upon the right of withdrawal by, or payment of, depositors and creditors of such bank as he may deem necessary to the protection of the depositors and creditors as a whole. Provided, however, that such limitation shall be applicable alike to all unsecured depositors and creditors and shall not defer their right of full withdrawal or payment for more than eighteen (18) months from the date of the reopening of such bank, nor defer any secured depositor or creditor to any extent without his written consent.

The limitations upon the right of withdrawal or payment set out in the certificate of the Commissioner shall when the bank is reopened be binding upon all unsecured depositors and creditors and all secured depositors and creditors who have assented thereto in writing. The State of Texas, or any county, city, common or independent school district or any other political subdivision of this State, as depositor or creditor, may by the proper administrative official or officials, board, or tribunal agree to such limitations, if, in his or their opinion such agreement is to the best interest of all concerned.

SECTION 29. Article 8, Chapter VIII, The Texas Banking Code of 1943 (Article 342-808, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 8. NOTICE TO DEPOSITORS AND CREDITORS. Upon final determination that any state *or private* bank is to be liquidated by the Commissioner, he shall publish notice for the time and in the manner prescribed in Article 2 of this Chapter, provided, however, that the Commissioner's notice shall require all depositors and creditors to file written proofs of claim with the Commissioner at his office in Austin, Texas, and the Commissioner shall within thirty (30) days after the first publication of such notice mail a similar notice to each depositor or creditor shown upon the books of the bank at his address as reflected thereby.

SECTION 30. Article 9, Chapter VIII, The Texas Banking Code of 1943 (Article 342-809, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 9. PRESENTATION OF CLAIM. Each depositor, creditor or other person asserting any claim of any character against a state *or private* bank in the process of liquidation by the Commissioner, shall within eighteen (18) months of the date of the first publication of notice, as provided for in the preceding article, present his claim in writing to the Commissioner at his office in Austin, Texas. Such claims shall state the facts upon which the same are based; shall set out any right of priority of payment or other specific rights asserted by the claimant and shall be signed and sworn to by the claimant.

SECTION 31. Article 10, Chapter VIII, The Texas Banking Code of 1943 (Article 342-810, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 10. APPROVAL—CLASSIFICATION AND REJECTION. Within three (3) months after receipt of any claim against a state *or private* bank which is in his hands for liquidation, the Commissioner shall, unless such time is extended by written agreement with the claimant, approve or reject such claim in whole or in part. If he approves such claim, or any part thereof, he shall classify the same and enter such claim and his action thereon in a claim register. If the Commissioner rejects any claim in whole or in part, or if he denies any right of priority of payment or any other right asserted by the claimant, he shall notify the claimant of his action by registered mail.

SECTION 32. Article 12, Chapter VIII, The Texas Banking Code of 1943 (Article 342-812, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 12. POWERS OF COMMISSIONER—SALE OF ASSETS, COMPROMISES AND AGREEMENTS. Pursuant to the order of the district court, entered with or without hearing, the Commissioner may sell any of the assets of a state *or private* bank in his hands for liquidation; may borrow money and pledge the whole or any part of such assets of such bank to secure the debt created; may compromise or compound any bad or doubtful claim held by or asserted against such bank; and may enter into any other kind or character of contract or agreement on behalf of such bank which he deems necessary or proper to the management, conservation or liquidation of its assets and all parties interested in the affairs of such bank shall be bound and precluded by the action of the Commissioner. Provided that said court, if it deems it advantageous or proper, may require notice and hearing before entering any order, and in that event shall, by order, fix the time and place of the hearing and prescribe the character of notice to be given thereof. Further provided that said court, in its discretion, and subject to such limitations as it may prescribe, may by general order authorize the Commissioner (a) to compound or compromise any claim or debt involving not more than Ten Thousand Dollars (\$10,000) held by or asserted against the bank, and (b) to sell all chattels belonging to the bank.

SECTION 33. Article 13, Chapter VIII, The Texas Banking Code of 1943 (Article 342-813, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 13. EXPENSES OF ADMINISTRATION. The expense of liquidation of state *or private* banks shall be paid out of the assets thereof, subject to review and approval by order of the district court. The Commissioner is authorized to employ such special agents, attorneys and other assistants as may be necessary or proper to the administration of the affairs of such banks, and shall, if he deems it to be in the interest of economy and efficiency, establish a central office unit to assist in the supervision of the liquidation of said banks.

SECTION 34. Article 14, Chapter VIII, The Texas Banking Code of 1943 (Article 342-814, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 14. DIVIDENDS—DELAYED CLAIMS. The Commissioner may from time to time in the course of the liquidation of a state *or private* bank, upon order of the district court, pay dividends to those depositors and creditors who have established their claims, provided that no final dividend shall be paid within eighteen (18) months of the date of the first publication of notice as prescribed in Article 8 of this Chapter. All claims filed after the declaration and payment of any dividend and prior to the expiration of such eighteen (18) months shall, if approved, participate in dividends previously paid before any additional dividend is declared. Claims which are not presented within said eighteen (18) months period shall not participate in any dividend or distribution of assets until after full payment of all approved claims presented during such period.

SECTION 35. Article 1, Chapter IX, The Texas Banking Code of 1943 (Article 342-901, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 1. STATE INSTRUMENTALITY—DEPOSITARY—FISCAL AGENT. All state and private banks are hereby declared to be charged with the public interest and shall be under state control and be subject to such legislation as may be enacted for the regulation of such banking institutions. Such state banks shall be deemed instrumentalities and agencies of the state. State and private banks~~[—and]~~ may, when lawfully designated thereto, act as depositaries for the public funds of this State or any county, city, common or independent school district or any other political subdivision of this State, in accordance with the laws of this State governing depositaries of public funds now or hereafter existing; and such ~~[state]~~ banks shall act as fiscal agents for the United States, the State of Texas, or any county, city, common or independent school district or any other political subdivision of this State on request and upon reasonable compensation.

SECTION 36. Sections 1 and 2, Article 12, Chapter IX, The Texas Banking Code of 1943 (Article 342-912, Vernon's Texas Civil Statutes), are amended to read as follows:

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

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

SECTION 37. Section (a), Article 14, Chapter IX, The Texas Banking Code of 1943 (Article 342-914, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Commissioner has jurisdiction over a bank holding company to the same extent as a state or private bank if the bank with the largest amount of total assets owned by the bank holding company is a state or private bank or if the majority of the combined assets of ~~[state and national]~~ banks owned by the bank holding company are held by state and private banks. The Commissioner shall accept the Reports of Inspection of the Board of Governors of the Federal Reserve System.

SECTION 38. Article 15, Chapter IX, The Texas Banking Code of 1943 (Article 342-915, Vernon's Texas Civil Statutes), is amended to read as follows:

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

SECTION 39. 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.

Ch. 321, § 39

70th LEGISLATURE—REGULAR SESSION

Passed the Senate on March 26, 1987, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendment on May 25, 1987, by a viva-voce vote.
Passed the House, with amendment, on May 22, 1987, by a non-record vote.

Approved June 11, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.