

By: Fraser

S.B. No. 1546

A BILL TO BE ENTITLED

AN ACT

relating to the application of the Business Organizations Code to certain financial institutions and the regulation of those institutions by the Texas Department of Banking.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 11.105, Finance Code, is amended to read as follows:

Sec. 11.105. MATTER IN WHICH MEMBER HAS PERSONAL INTEREST. A member of the finance commission may not act or participate in the portion of a commission meeting during which the matter considered specifically relates to an entity:

(1) of which the member or the member's spouse is an officer, director, stockholder, shareholder, ~~[manager, participant, participant-transferee,~~] or owner; or

(2) in which the member or the member's spouse has another financial interest.

SECTION 2. Sections 31.002(a)(7), (9), (13), (29), (42), (48), (49), (57), and (58), Finance Code, are amended to read as follows:

(7) "Board" means the board of directors~~[, managers, or managing participants]~~ of, or a person or group of persons acting in a comparable capacity for, a state bank or other entity. As the context requires, the term includes the board of managers of a limited banking association.

(9) "Capital" means:

(A) the sum of:

(i) the par value of all shares [~~or participation shares~~] of the state bank having a par value that have been issued;

(ii) the consideration set by the board [~~in the manner provided by the Texas Business Corporation Act~~] for all shares [~~or participation shares~~] of the state bank without par value that have been issued, except a part of that consideration that:

(a) has been actually received;

(b) is less than all of that consideration; and

(c) the board, by resolution adopted not later than the 60th day after the date of issuance of those shares, has allocated to surplus with the prior approval of the banking commissioner; and

(iii) an amount not included in Subparagraphs (i) and (ii) that has been transferred to capital of the state bank, on the payment of a share dividend or on adoption by the board of a resolution directing that all or part of surplus be transferred to capital, minus each reduction made as permitted by law; less

(B) all amounts otherwise included in Paragraphs (A)(i) and (ii) that are attributable to the issuance of securities by the state bank and that the banking commissioner determines, after notice and an opportunity for hearing, should be classified

as debt rather than equity securities.

(13) "Control" means:

(A) the ownership of or ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, 25 percent or more of the outstanding shares of a class of voting securities of a bank or other company;

(B) the ability to control the election of a majority of the board of a bank or other company;

(C) the power to exercise, directly or indirectly, a controlling influence over the management or policies of the bank or other company as determined by the banking commissioner after notice and an opportunity for hearing; or

(D) the conditioning of the transfer of 25 percent or more of the outstanding shares ~~[or participation shares]~~ of a class of voting securities of a bank or other company on the transfer of 25 percent or more of the outstanding shares of a class of voting securities of another bank or other company.

(29) "Hazardous condition" means:

(A) a refusal by a state bank to permit examination of its books, papers, accounts, records, or affairs by the banking commissioner;

(B) a circumstance or condition in which an unreasonable risk of substantial loss is threatened to the depositors, creditors, or shareholders~~[, or participants]~~ of a state bank, including a circumstance or condition in which a state bank:

(i) has inadequate equity capital, or the

adequacy of its equity capital is threatened;

(ii) has concentrated an excessive or unreasonable portion of its assets in a type or character of loan or investment;

(iii) violates or refuses to comply with this subtitle, another statute or rule applicable to state banks, or a final and enforceable order of the banking commissioner;

(iv) is in a condition that renders the continuation of a particular business practice hazardous to the public or to its depositors and creditors;

(v) conducts business in an unsafe and unsound manner; or

(vi) is insolvent; or

(C) a violation by a state bank of a condition of its chartering or an agreement entered into between the bank and the banking commissioner or the department.

(42) "Participation agreement" means the instrument stating the agreement among the participants of a limited banking association relating to the rights and duties of the participants ~~[and participant-transferees]~~, including:

(A) allocations of income, loss, deduction, credit, distributions, liquidation rights, redemption rights, and liabilities of participants~~[, — priority rights — of participant-transferees to transfer participation shares, and rights of participants to purchase participation shares of participant-transferees]~~;

(B) procedures for elections and voting by

1 participants; and

2 (C) any other matter not prohibited by or  
3 inconsistent with this subtitle.

4 (48) "Shareholder" means an owner of a share in a  
5 banking association. As the context requires, the term includes a  
6 participant.

7 (49) "Shares" means the units into which the  
8 proprietary interests of a banking association are divided or  
9 subdivided by means of classes, series, relative rights, or  
10 preferences. As the context requires, the term includes  
11 participation shares.

12 (57) "Undivided profits" means the part of equity  
13 capital of a state bank equal to the balance of its net profits,  
14 income, gains, and losses since the date of its formation, minus  
15 subsequent distributions to shareholders ~~[or participants]~~ and  
16 transfers to surplus or capital under share dividends or  
17 appropriate board resolutions. The term includes amounts allocated  
18 to undivided profits as a result of a merger.

19 (58) "Voting security" means a share~~[, participation~~  
20 ~~share]~~ or other evidence of proprietary interest in a state bank or  
21 other company that has as an attribute the right to vote or  
22 participate in the election of the board of the state bank or other  
23 company, regardless of whether the right is limited to the election  
24 of fewer than all of the board members. The term includes a  
25 security that is convertible or exchangeable into a voting security  
26 ~~[and a nonvoting participation share of a managing participant]~~.

27 SECTION 3. Sections 31.006(a), (b), and (c), Finance Code,

are amended to read as follows:

(a) The provisions of the ~~[Texas]~~ Business Organizations Code ~~[Corporation—Act]~~ regarding liability, defenses, and indemnification of a director, officer, agent, or employee of a corporation apply to a director, officer, agent, or employee of a depository institution in this state. Except as limited by those provisions, a disinterested director, ~~[manager, managing participant,~~ officer, or employee of a depository institution may not be held personally liable in an action seeking monetary damages arising from the conduct of the depository institution's affairs unless the damages resulted from the gross negligence or wilful or intentional misconduct of the person during the person's term of office or service with the depository institution.

(b) A director, ~~[manager, managing participant,~~ officer, or employee of a depository institution is disinterested with respect to a decision or transaction if:

(1) the person fully discloses any interest in the decision or transaction and does not participate in the decision or transaction; or

(2) the decision or transaction does not involve any of the following:

(A) personal profit for the person through dealing with the depository institution or usurping an opportunity of the depository institution;

(B) buying or selling an asset of the depository institution in a transaction in which the person has a direct or indirect pecuniary interest;

1 (C) dealing with another depository institution  
2 or other person in which the person is a director, [~~manager,~~  
3 ~~managing participant,~~] officer, or employee or otherwise has a  
4 significant direct or indirect financial interest; or

5 (D) dealing with a family member of the person.

6 (c) A director[~~, manager, managing participant,~~] or officer  
7 who, in performing the person's duties and functions, acts in good  
8 faith and reasonably believes that reliance is warranted is  
9 entitled to rely on information, including an opinion, report,  
10 financial statement or other type of statement or financial data,  
11 decision, judgment, or performance, prepared, presented, made, or  
12 rendered by:

13 (1) one or more directors, [~~managers, managing~~  
14 ~~participants,~~] officers, or employees of the depository  
15 institution, or of an entity under joint or common control with the  
16 depository institution, who the director[~~, manager, managing~~  
17 ~~participant,~~] or officer reasonably believes merit confidence;

18 (2) legal counsel, a public accountant, or another  
19 person who the director[~~, manager, managing participant,~~] or  
20 officer reasonably believes merits confidence; or

21 (3) a committee of the board of which the director[~~,~~  
22 ~~manager, or managing participant,~~] is not a member.

23 SECTION 4. Section 31.007(a), Finance Code, is amended to  
24 read as follows:

25 (a) An officer, director, [~~manager, managing participant,~~]  
26 or employee of a bank that has its main office or a branch located in  
27 this state with fewer than 500 shareholders [~~or participants~~] or of

1 a bank holding company with fewer than 500 shareholders [~~or~~  
2 ~~participants~~] that controls a bank that has its main office or a  
3 branch located in this state is exempt from the registration and  
4 licensing provisions of The Securities Act (Article 581-1 et seq.,  
5 Vernon's Texas Civil Statutes) with respect to that person's  
6 participation in a transaction, including a sale, involving  
7 securities issued by:

8 (1) the bank or bank holding company of which that  
9 person is an officer, director, [~~manager, managing participant,~~] or  
10 employee;

11 (2) a bank holding company that controls the bank of  
12 which that person is an officer, director, [~~manager, managing~~  
13 ~~participant,~~] or employee; or

14 (3) a bank controlled by the bank holding company of  
15 which that person is an officer, director, [~~manager, managing~~  
16 ~~participant,~~] or employee.

17 SECTION 5. Section 31.105(b), Finance Code, is amended to  
18 read as follows:

19 (b) The banking commissioner may examine a state bank more  
20 often than required by Subsection (a) as the commissioner considers  
21 necessary to:

22 (1) safeguard the interests of depositors, creditors,  
23 and shareholders[~~, participants, and participant-transferees~~]; and

24 (2) efficiently enforce applicable law.

25 SECTION 6. Section 31.301(a), Finance Code, is amended to  
26 read as follows:

27 (a) Except as expressly provided otherwise by this



1 subtitle, Chapter 11 or 12, or a rule adopted under this subtitle,  
2 the following are confidential and may not be disclosed by the  
3 banking commissioner or an employee of the department:

4 (1) information directly or indirectly obtained by the  
5 department in any manner, including an application or examination,  
6 concerning the financial condition or business affairs of a  
7 financial institution or a present, former, or prospective  
8 shareholder, ~~[participant]~~ officer, director, ~~[manager]~~,  
9 affiliate, or service provider of a financial institution, other  
10 than information in a published statement or in the public portion  
11 of a call report or profit and loss statement; and

12 (2) all related files and records of the department.

13 SECTION 7. Section 31.308, Finance Code, is amended to read  
14 as follows:

15 Sec. 31.308. SHAREHOLDER INSPECTION RIGHTS. (a)  
16 Notwithstanding Section 21.218 or 101.502, Business Organizations  
17 Code ~~[Article 2.44, Texas Business Corporation Act]~~, a shareholder  
18 ~~[or participant]~~ of a state bank may not examine:

19 (1) a report of examination or other confidential  
20 property of the department that is in the possession of the state  
21 bank; or

22 (2) a book or record of the state bank that directly or  
23 indirectly pertains to financial or other information maintained by  
24 the bank on behalf of its customers, including a specific item in  
25 the minutes of the board or a committee of the board regarding loan  
26 review and approval or a loan delinquency report that would tend to  
27 identify the bank's customer.

1 (b) This section does not affect a right of a shareholder  
2 ~~[or participant]~~ of a state bank acting in another capacity.

3 SECTION 8. Section 32.002(a), Finance Code, is amended to  
4 read as follows:

5 (a) The articles of association of a state bank must be  
6 signed and acknowledged by each organizer and must contain:

7 (1) the name of the bank, subject to Subsection (b);

8 (2) the period of the bank's duration, which may be  
9 perpetual, subject to Subsection (c);

10 (3) the powers of the bank, which may be stated as:

11 (A) all powers granted by law to a state bank; or

12 (B) a list of the specific powers under Section  
13 32.001 that the bank chooses to exercise;

14 (4) the aggregate number of shares ~~[or participation~~  
15 ~~shares]~~ that the bank will be authorized to issue and the number of  
16 classes of shares ~~[or participation shares]~~, which may be one or  
17 more;

18 (5) if the shares ~~[or participation shares]~~ are to be  
19 divided into classes:

20 (A) the designation of each class and statement  
21 of the preferences, limitations, and relative rights of the shares  
22 ~~[or participation shares]~~ of each class, which in the case of a  
23 limited banking association may be more fully set forth in the  
24 participation agreement;

25 (B) the number of shares ~~[or participation~~  
26 ~~shares]~~ of each class; and

27 (C) a statement of the par value of the shares ~~[or~~

1 ~~participation shares~~] of each class or that the shares [~~or~~  
2 ~~participation shares~~] are to be without par value;

3 (6) any provision limiting or denying to shareholders  
4 [~~or participants~~] the preemptive right to acquire additional or  
5 treasury shares [~~or participation shares~~] of the bank;

6 (7) any provision granting the right of shareholders  
7 [~~or participants~~] to cumulative voting in the election of directors  
8 [~~or managers~~];

9 (8) the aggregate amount of consideration to be  
10 received for all shares [~~or participation shares~~] initially issued  
11 by the bank and a statement that:

12 (A) all authorized shares [~~or participation~~  
13 ~~shares~~] have been subscribed; and

14 (B) all subscriptions received provide for the  
15 consideration to be fully paid in cash before issuance of the  
16 charter;

17 (9) any provision [~~consistent with law that the~~  
18 ~~organizers elect to set forth in the articles of association for the~~  
19 ~~regulation of the internal affairs of the bank or~~] that is otherwise  
20 required by this subtitle to be set forth in the articles of  
21 association;

22 (10) the street address of the bank's initial home  
23 office; [~~and~~]

24 (11) [~~either~~]  
25 [~~(A)~~] the number of directors [~~or managers~~]  
26 constituting the initial board and the names and street addresses  
27 of the persons who are to serve as directors [~~or managers~~] until the

1 first annual meeting of shareholders [~~or participants~~] or until  
2 successor directors [~~or managers~~] have been elected and qualified;  
3 and

4 (12) subject to Section 32.008, any provision  
5 consistent with law that the organizers elect to set forth in the  
6 articles of association for the regulation of the internal affairs  
7 of the bank, including provisions permissible under the Business  
8 Organizations Code for:

9 (A) a for-profit corporation, in the case of a  
10 proposed banking association; or

11 (B) a limited liability company, in the case of a  
12 proposed limited banking association [~~or~~

13 [~~(B) the statement described by Subsection (d)~~].

14 SECTION 9. Section 32.003, Finance Code, is amended to read  
15 as follows:

16 Sec. 32.003. APPLICATION FOR STATE BANK CHARTER; STANDARDS  
17 FOR APPROVAL. (a) An application for a state bank charter must be  
18 made under oath and in the form required by the banking  
19 commissioner, who shall inquire fully into the identity and  
20 character of each proposed director, [~~manager~~] officer, [~~managing~~  
21 ~~participant~~] and principal shareholder [~~or participant~~]. The  
22 application must be accompanied by all charter fees and deposits  
23 required by law.

24 (b) The banking commissioner shall grant a state bank  
25 charter only if the commissioner determines that the organizers  
26 have established that public convenience and advantage will be  
27 promoted by the establishment of the state bank. In determining

1 whether public convenience and advantage will be promoted, the  
2 banking commissioner shall consider the convenience of the public  
3 to be served and whether:

4 (1) the organizational and capital structure and  
5 amount of initial capitalization is adequate for the business plan;

6 (2) the anticipated volume and nature of business  
7 indicates a reasonable probability of success and profitability  
8 based on the market sought to be served;

9 (3) the officers and~~[7]~~ directors~~[, managers, and~~  
10 ~~managing participants]~~ as a group have sufficient banking  
11 experience, ability, standing, competence, trustworthiness, and  
12 integrity to justify a belief that the bank will operate in  
13 compliance with law and that success of the bank is probable;

14 (4) each principal shareholder ~~[or participant]~~ has  
15 sufficient experience, ability, standing, competence,  
16 trustworthiness, and integrity to justify a belief that the bank  
17 will be free from improper or unlawful influence or interference  
18 with respect to the bank's operation in compliance with law; and

19 (5) the organizers are acting in good faith.

20 SECTION 10. Section 32.004(c), Finance Code, is amended to  
21 read as follows:

22 (c) Rules adopted under this subtitle may specify the  
23 confidential or nonconfidential character of information obtained  
24 by the department under this chapter. Except as provided by  
25 Subchapter D, Chapter 31, or in rules regarding confidential  
26 information, the financial statement of a proposed officer or~~[7]~~  
27 director~~[, manager, or managing participant]~~ is confidential and

not subject to public disclosure.

SECTION 11. Section 32.006, Finance Code, is amended to read as follows:

Sec. 32.006. ISSUANCE OF CERTIFICATE OF AUTHORITY. A state bank may not engage in the business of banking until it receives a certificate of authority from the banking commissioner. The banking commissioner may not deliver the certificate of authority until the bank has:

(1) received cash for the issuance of all authorized shares ~~[or participation shares]~~ in the full amount subscribed;

(2) elected or qualified the initial officers and directors ~~[or managers, as appropriate,]~~ named in the application for charter or other officers and directors ~~[or managers]~~ approved by the banking commissioner; and

(3) complied with all the other requirements of this subtitle relating to the organization of state banks.

SECTION 12. Section 32.008, Finance Code, is amended to read as follows:

Sec. 32.008. APPLICATION OF GENERAL CORPORATE LAW. (a) The ~~[Texas]~~ Business Organizations Code applies ~~[Corporation Act and the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes) apply]~~ to a banking association as if it were a for-profit corporation, and ~~[the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes) applies]~~ to a limited banking association as if it were a limited liability company, to the extent not inconsistent with this subtitle or the proper business of a state bank, except that:

1           (1) a reference in the Business Organizations Code  
2 ~~[those Acts]~~ to the secretary of state means the banking  
3 commissioner unless the context requires otherwise; and

4           (2) the right of shareholders ~~[or participants]~~ to  
5 cumulative voting in the election of directors ~~[or managers]~~ exists  
6 only if granted by the bank's articles of association.

7           (b) The finance commission may adopt rules to limit or  
8 refine the applicability of the laws listed by Subsection (a) or (d)  
9 to a state bank or to alter or supplement the procedures and  
10 requirements of those laws applicable to an action taken under this  
11 chapter.

12           (c) Unless expressly authorized by this subtitle or a rule  
13 adopted under this subtitle, a state bank may not take an action  
14 authorized by a law listed by Subsection (a) or (d) regarding its  
15 corporate status, its capital structure, or a matter of corporate  
16 governance, of the type for which those laws would require a filing  
17 with the secretary of state if the bank were a business corporation,  
18 without submitting the filing to the banking commissioner and  
19 obtaining the banking commissioner's prior written approval of the  
20 action.

21           (d) Notwithstanding Subsection (a), this subsection  
22 establishes governing law with respect to a state bank organized  
23 before January 1, 2006:

24                 (1) to the extent not inconsistent with this subtitle  
25 or the proper business of a state bank:

26                         (A) the Texas Business Corporation Act, the Texas  
27 Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq.,

1 Vernon's Texas Civil Statutes), and any other law relating to  
2 general business corporations apply to a state banking association,  
3 and a reference in this subtitle to the Business Organizations Code  
4 is considered a reference to the prior law; and

5 (B) the Texas Limited Liability Company Act  
6 (Article 1528n, Vernon's Texas Civil Statutes) and any other law  
7 relating to a limited liability company organized in Texas apply to  
8 a limited banking association, and a reference in this subtitle to  
9 the Business Organizations Code is considered a reference to the  
10 prior law;

11 (2) the finance commission may establish rules  
12 permitting a state bank to elect to be governed by the provisions of  
13 the Business Organizations Code to the extent not inconsistent with  
14 this subtitle or the proper business of a state bank; and

15 (3) this subsection expires January 1, 2010.

16 SECTION 13. Sections 32.101(c) and (d), Finance Code, are  
17 amended to read as follows:

18 (c) ~~[A limited banking association may not amend its~~  
19 ~~articles of association to extend its period of existence for a~~  
20 ~~perpetual period or for any period of years, unless the period of~~  
21 ~~existence is expressly contingent on the events resulting in~~  
22 ~~dissolution of the limited banking association under Section~~  
23 ~~33.208.~~

24 ~~[(d)]~~ Amendment or restatement of the articles of  
25 association of a state bank and approval of the bank's board and  
26 shareholders ~~[or participants]~~ must be made or obtained as provided  
27 by the ~~[Texas]~~ Business Organizations Code ~~[Corporation Act]~~ for



the amendment or restatement of a certificate of formation by a for-profit corporation [~~articles of incorporation~~] except as otherwise provided by this subtitle or rules adopted under this subtitle. The original and one copy of the articles of amendment or restated articles of association must be filed with the banking commissioner for approval. Unless the submission presents novel or unusual questions, the banking commissioner shall approve or reject the amendment or restatement not later than the 31st day after the date the banking commissioner considers the submission informationally complete and accepted for filing. The banking commissioner may require the submission of additional information as considered necessary to an informed decision to approve or reject any amendment or restatement of articles of association under this section. If the banking commissioner finds that the amendment or restatement conforms to law and any conditions imposed by the banking commissioner, and any required filing fee has been paid, the banking commissioner shall:

(1) endorse the face of the original and copy of the amendment or restatement with the date of approval and the word "Approved";

(2) file the original of the amendment or restatement in the department's records; and

(3) deliver a certified copy of the amendment or restatement to the bank.

SECTION 14. The heading to Section 32.102, Finance Code, is amended to read as follows:

Sec. 32.102. ESTABLISHING SERIES OF SHARES [~~OR~~

1 ~~PARTICIPATION SHARES~~].

2 SECTION 15. Sections 32.102(a) and (b), Finance Code, are  
3 amended to read as follows:

4 (a) If the articles of association expressly give the board  
5 of a state bank authority to establish shares ~~[or participation~~  
6 ~~shares]~~ in series and determine the preferences, limitations, and  
7 relative rights of each series, the board may do so only in  
8 compliance with this section and any rules adopted under this  
9 subtitle.

10 (b) A series of shares ~~[or participation shares]~~ may be  
11 established in the manner provided by the ~~[Texas]~~ Business  
12 Organizations Code ~~[Corporation Act]~~ as if the state bank were a  
13 domestic entity ~~[corporation]~~, but the shares ~~[or participation~~  
14 ~~shares]~~ of the series may not be issued and sold without the prior  
15 written approval of the banking commissioner under Section 32.103.  
16 The bank shall file the original and one copy of the statement of  
17 action required by the ~~[Texas]~~ Business Organizations Code  
18 ~~[Corporation Act]~~ with the banking commissioner.

19 SECTION 16. Sections 32.103(a) and (b), Finance Code, are  
20 amended to read as follows:

21 (a) A state bank may not reduce or increase its outstanding  
22 capital and surplus through dividend, redemption, issuance of  
23 shares ~~[or participation shares]~~, or otherwise, without the prior  
24 written approval of the banking commissioner, except as permitted  
25 by this section or rules adopted under this subtitle.

26 (b) Unless restricted by rule, prior written approval is not  
27 required for an increase in capital and surplus accomplished

1 through:

2 (1) issuance of shares of common stock [~~or their~~  
3 ~~equivalent in participation shares~~] for cash;

4 (2) declaration and payment of pro rata share  
5 dividends as defined by the [~~Texas~~] Business Organizations Code  
6 [~~Corporation Act~~]; or

7 (3) adoption by the board of a resolution directing  
8 that all or part of undivided profits be transferred to capital or  
9 surplus.

10 SECTION 17. Sections 32.104(a) and (b), Finance Code, are  
11 amended to read as follows:

12 (a) With the prior written approval of the banking  
13 commissioner, a state bank may at any time, through action of its  
14 board and without requiring action of its shareholders [~~or~~  
15 ~~participants~~], issue and sell its capital notes or debentures. The  
16 capital notes or debentures must be subordinate to the claims of  
17 depositors and may be subordinate to other claims, including the  
18 claims of other creditors or the shareholders [~~or participants~~].

19 (b) Capital notes or debentures may be convertible into  
20 shares [~~or participation shares~~] of any class or series. The  
21 issuance and sale of convertible capital notes or debentures are  
22 subject to satisfaction of preemptive rights, if any, to the extent  
23 provided by law.

24 SECTION 18. Sections 32.301(b) and (c), Finance Code, are  
25 amended to read as follows:

26 (b) Implementation of the merger by the parties and approval  
27 of the board, shareholders, [~~participants~~] or owners of the

parties must be made or obtained in accordance with the ~~[Texas]~~ Business Organizations Code ~~[Corporation Act]~~ as if the state bank were a domestic entity ~~[corporation]~~ and all other parties to the merger were foreign ~~[corporations and other]~~ entities, except as may be otherwise provided by applicable rules.

(c) A consummated merger has the effect provided by the ~~[Texas]~~ Business Organizations Code ~~[Corporation Act]~~. A separate application is not required to relocate the home office of a surviving state bank or to grant authority to a surviving bank to operate new branch offices that previously existed as part of a merging financial institution if the intent of the surviving bank is clearly stated as part of the plan of merger.

SECTION 19. Section 32.303, Finance Code, is amended to read as follows:

Sec. 32.303. RIGHTS OF DISSENTERS FROM MERGER. A shareholder~~[, participant, or participant-transferee]~~ may dissent from the merger to the extent, and by following the procedure provided, by the ~~[Texas]~~ Business Organizations Code ~~[Corporation Act]~~ or any rules adopted under this subtitle.

SECTION 20. Section 32.403, Finance Code, is amended to read as follows:

Sec. 32.403. LIQUIDATION OF SELLING INSTITUTION. If the selling financial institution is at any time after the sale of assets voluntarily or involuntarily closed for liquidation by a state or federal regulatory agency, the purchasing bank shall pay to the receiver of the selling institution the balance of the money held by it in trust or on deposit for the selling institution and

1 not yet paid to the depositors and creditors of the selling  
2 institution. Without further action the purchasing bank is  
3 discharged from all responsibilities to the selling institution and  
4 to ~~[or]~~ the selling institution's receiver, depositors, creditors,  
5 and shareholders~~[, participants, or participant-transferees]~~.

6 SECTION 21. Sections 32.405(a) and (c), Finance Code, are  
7 amended to read as follows:

8 (a) The board of a state bank, with the prior written  
9 approval of the banking commissioner, may cause the bank to sell all  
10 or substantially all of its assets without shareholder ~~[or~~  
11 ~~participant]~~ approval if:

12 (1) the banking commissioner finds the interests of  
13 depositors and creditors are jeopardized because of insolvency or  
14 imminent insolvency and that the sale is in their best interest; and

15 (2) the Federal Deposit Insurance Corporation or its  
16 successor approves the transaction and agrees to provide assistance  
17 to the prospective buyer under 12 U.S.C. Section 1823(c) or a  
18 comparable law unless the deposits of the bank are not insured.

19 (c) This section does not affect the banking commissioner's  
20 right to take action under another law. The sale by a state bank of  
21 all or substantially all of its assets with shareholder ~~[or~~  
22 ~~participant]~~ approval is considered a voluntary dissolution and  
23 liquidation and is governed by Subchapter B, Chapter 36.

24 SECTION 22. Sections 32.501(b) and (c), Finance Code, are  
25 amended to read as follows:

26 (b) The merger or conversion by the state bank must be made  
27 and approval of its board and~~[7]~~ shareholders~~[, or participants]~~

1 must be obtained in accordance with the [~~Texas~~] Business  
2 Organizations Code [~~Corporation Act~~] as if the state bank were a  
3 domestic entity [~~corporation~~] and all other parties to the  
4 transaction, if any, were foreign [~~corporations and other~~]  
5 entities, except as provided by rule. For purposes of this  
6 subsection, a conversion is considered a merger into the successor  
7 form of financial institution.

8 (c) The state bank does not cease to be a state bank subject  
9 to the supervision of the banking commissioner unless:

10 (1) the banking commissioner has been given written  
11 notice of the intention to merge or convert before the 31st day  
12 before the date of the proposed transaction;

13 (2) the bank has published notice of the transaction,  
14 in the form and frequency specified by the banking commissioner,  
15 in:

16 (A) a newspaper of general circulation published  
17 in the county of its home office or, if such a newspaper is not  
18 published in the county, in an adjacent county; and

19 (B) other locations that the banking  
20 commissioner considers appropriate;

21 (3) the bank has filed with the banking commissioner:

22 (A) a copy of the application filed with the  
23 successor regulatory authority, including a copy of each contract  
24 evidencing or implementing the merger or conversion, or other  
25 documents sufficient to show compliance with applicable law;

26 (B) a certified copy of all minutes of board  
27 meetings and shareholder [~~or participant~~] meetings at which action

1 was taken regarding the merger or conversion; and

2 (C) a publisher's certificate showing  
3 publication of the required notice;

4 (4) the banking commissioner determines that:

5 (A) all deposit and other liabilities of the  
6 state bank are fully discharged, assumed, or otherwise retained by  
7 the successor form of financial institution;

8 (B) any conditions imposed by the banking  
9 commissioner for the protection of depositors and creditors have  
10 been met or otherwise resolved; and

11 (C) any required filing fees have been paid; and

12 (5) the bank has received a certificate of authority  
13 to do business as the successor financial institution.

14 SECTION 23. Section 32.502(b), Finance Code, is amended to  
15 read as follows:

16 (b) A financial institution applying to convert into a state  
17 bank may receive a certificate of authority to do business as a  
18 state bank if the banking commissioner finds that:

19 (1) the financial institution is not engaging in a  
20 pattern or practice of unsafe and unsound banking practices;

21 (2) the financial institution has adequate  
22 capitalization for a state bank to engage in business at the same  
23 locations as the financial institution is engaged in business  
24 before the conversion;

25 (3) the financial institution can be expected to  
26 operate profitably after the conversion;

27 (4) the officers and[7] directors[~~7 managers, and~~

1 ~~managing participants~~] of the financial institution as a group have  
2 sufficient banking experience, ability, standing, competence,  
3 trustworthiness, and integrity to justify a belief that the  
4 financial institution will operate as a state bank in compliance  
5 with law;

6 (5) each principal shareholder ~~[or participant]~~ has  
7 sufficient experience, ability, standing, competence,  
8 trustworthiness, and integrity to justify a belief that the  
9 financial institution will be free from improper or unlawful  
10 influence or interference with respect to the financial  
11 institution's operation as a state bank in compliance with law; and

12 (6) if the converting financial institution did not  
13 have general depository powers and the state bank will have those  
14 powers, the factors set forth in Section 32.003(b) are satisfied.

15 SECTION 24. Section 33.001(b), Finance Code, is amended to  
16 read as follows:

17 (b) For purposes of this subchapter and except as otherwise  
18 provided by rules adopted under this subtitle, the principal  
19 shareholder ~~[or principal participant]~~ of a state bank that  
20 directly or indirectly owns or has the power to vote a greater  
21 percentage of voting securities of the bank than any other  
22 shareholder ~~[or participant]~~ is considered to control the bank.

23 SECTION 25. Section 33.101(a), Finance Code, is amended to  
24 read as follows:

25 (a) Voting securities of a state bank held by the bank in a  
26 fiduciary capacity under a will or trust, whether registered in the  
27 bank's name or in the name of its nominee, may not be voted in the



1 election of directors [~~or managers~~] or on a matter affecting the  
2 compensation of directors, [~~managers,~~] officers, or employees of  
3 the bank in that capacity unless:

4 (1) under the terms of the will or trust, the manner in  
5 which the voting securities are to be voted may be determined by a  
6 donor or beneficiary of the will or trust and the donor or  
7 beneficiary makes the determination in the matter at issue;

8 (2) the terms of the will or trust expressly direct the  
9 manner in which the securities must be voted so that discretion is  
10 not vested in the bank as fiduciary; or

11 (3) the securities are voted solely by a cofiduciary  
12 that is not an affiliate of the bank, as if the cofiduciary were the  
13 sole fiduciary.

14 SECTION 26. Section 33.102, Finance Code, is amended to  
15 read as follows:

16 Sec. 33.102. BYLAWS. Each [~~Except as provided by Section~~  
17 ~~33.207, each~~] state bank shall adopt bylaws and may amend its bylaws  
18 for the purposes and according to the procedures provided by the  
19 [~~Texas~~] Business Organizations Code [~~Corporation Act~~].

20 SECTION 27. Section 33.103, Finance Code, is amended to  
21 read as follows:

22 Sec. 33.103. BOARD OF DIRECTORS[~~, MANAGERS, OR MANAGING~~  
23 ~~PARTICIPANTS~~]. (a) The board of a state bank must consist of not  
24 fewer than five but not more than 25 directors, [~~managers, or~~  
25 ~~managing participants,~~] a majority of whom are residents of this  
26 state. The [~~Except for a limited banking association in which~~  
27 ~~management has been retained by its participants, the~~] principal

1 executive officer of the bank is a member of the board. The  
2 principal executive officer acting in the capacity of a board  
3 member is the board's presiding officer unless the board elects a  
4 different presiding officer to perform the duties as designated by  
5 the board.

6 (b) Unless the banking commissioner consents otherwise in  
7 writing, a person may not serve as director~~[, manager, or managing~~  
8 ~~participant]~~ of a state bank if:

9 (1) the bank incurs an unreimbursed loss attributable  
10 to a charged-off obligation of or holds a judgment against:

11 (A) the person; or

12 (B) an entity that was controlled by the person  
13 at the time of funding and at the time of default on the loan that  
14 gave rise to the judgment or charged-off obligation;

15 (2) the person is the subject of an order described by  
16 Section 35.007(a); or

17 (3) the person has been convicted of a felony.

18 (c) If a state bank ~~[other than a limited banking~~  
19 ~~association operated by managing participants]~~ does not elect  
20 directors ~~[or managers]~~ before the 61st day after the date of its  
21 regular annual meeting, the banking commissioner may appoint a  
22 conservator under Chapter 35 to operate the bank and elect  
23 directors ~~[or managers]~~, as appropriate. If the conservator is  
24 unable to locate or elect persons willing and able to serve as  
25 directors ~~[or managers]~~, the banking commissioner may close the  
26 bank for liquidation.

27 (d) A vacancy on the board that reduces the number of

1 directors[, ~~managers, or managing participants~~] to fewer than five  
 2 must be filled not later than the 30th day after the date the  
 3 vacancy occurs. [~~A limited banking association with fewer than~~  
 4 ~~five managing participants shall add one or more new participants~~  
 5 ~~or elect a board of managers of not fewer than five persons to~~  
 6 ~~resolve the vacancy.~~] If the vacancy is not timely filled, the  
 7 banking commissioner may appoint a conservator under Chapter 35 to  
 8 operate the bank and elect a board of not fewer than five persons to  
 9 resolve the vacancy. If the conservator is unable to locate or  
 10 elect five persons willing and able to serve as directors [~~or~~  
 11 ~~managers~~], the banking commissioner may close the bank for  
 12 liquidation.

13 (e) Before each term to which a person is elected to serve as  
 14 a director [~~or manager~~] of a state bank, [~~or annually for a person~~  
 15 ~~who is a managing participant,~~] the person shall submit an  
 16 affidavit for filing in the minutes of the bank stating that the  
 17 person, to the extent applicable:

18 (1) accepts the position and is not disqualified from  
 19 serving in the position;

20 (2) will not violate or knowingly permit an officer,  
 21 director, [~~manager, managing participant,~~] or employee of the bank  
 22 to violate any law applicable to the conduct of business of the  
 23 bank; and

24 (3) will diligently perform the duties of the  
 25 position.

26 (f) The banking commissioner in the exercise of discretion  
 27 may waive or reduce the residency requirements for directors set

1   forth in Subsection (a).

2           SECTION 28. Section 33.104, Finance Code, is amended to  
3   read as follows:

4           Sec. 33.104. ADVISORY DIRECTOR [~~OR ADVISORY MANAGER~~]. An  
5   advisory director [~~or advisory manager~~] is not considered a  
6   director [~~or manager~~] if the advisory director [~~or advisory~~  
7   ~~manager~~]:

8           (1) is not elected by the shareholders [~~or~~  
9   ~~participants~~] of the bank;

10          (2) does not vote on matters before the board or a  
11   committee of the board;

12          (3) is not counted for purposes of determining a  
13   quorum of the board or committee; and

14          (4) provides solely general policy advice to the  
15   board.

16          SECTION 29. Sections 33.108(a) and (b), Finance Code, are  
17   amended to read as follows:

18          (a) An officer, director, [~~manager, managing participant,~~  
19   employee, or shareholder[, ~~or participant~~] of a state bank commits  
20   an offense if the person knowingly:

21           (1) conceals information or a fact, or removes,  
22   destroys, or conceals a book or record of the bank for the purpose  
23   of concealing information or a fact, from the banking commissioner  
24   or an agent of the banking commissioner; or

25           (2) removes, destroys, or conceals any book or record  
26   of the bank that is material to a pending or anticipated legal or  
27   administrative proceeding.

1 (b) An officer, director, [~~manager, managing participant,~~  
2 or employee of a state bank commits an offense if the person:

3 (1) knowingly makes a false entry in a book, record,  
4 report, or statement of the bank; or

5 (2) violates or knowingly participates in a violation  
6 of, or permits another of the bank's officers, directors,  
7 [~~managers, managing participants,~~] or employees to violate, the  
8 prohibition on lending trust funds under Section 113.052, Property  
9 Code.

10 SECTION 30. Section 33.109, Finance Code, is amended to  
11 read as follows:

12 Sec. 33.109. TRANSACTIONS WITH MANAGEMENT AND AFFILIATES.

13 (a) Without the prior approval of a disinterested majority of the  
14 board recorded in the minutes or, if a disinterested majority  
15 cannot be obtained, the prior written approval of the banking  
16 commissioner, a state bank may not directly or indirectly:

17 (1) sell or lease an asset of the bank to an officer,  
18 director, [~~manager, managing participant,~~] or principal  
19 shareholder [~~or participant~~] of the bank or of an affiliate of the  
20 bank; or

21 (2) purchase or lease an asset in which an officer,  
22 director, [~~manager, managing participant,~~] or principal  
23 shareholder [~~or participant~~] of the bank or of an affiliate of the  
24 bank has an interest.

25 (b) An officer or[~~]~~ director[~~, manager, or managing~~  
26 ~~participant~~] of the bank who knowingly participates in or permits a  
27 violation of this section commits an offense. An offense under this

subsection is a felony of the third degree.

SECTION 31. Section 33.201(a), Finance Code, is amended to read as follows:

(a) A ~~[Except as provided by Subsection (b), a]~~ participant~~[, participant transferee,]~~ or manager of a limited banking association is not liable for a debt, obligation, or liability of the limited banking association, including a debt, obligation, or liability under a judgment, decree, or order of court. A participant~~[, other than a full liability participant,]~~ or a manager of a limited banking association is not a proper party to a proceeding by or against a limited banking association unless the object of the proceeding is to enforce a participant's or manager's right against or liability to a limited banking association.

SECTION 32. Sections 33.204(a) and (b), Finance Code, are amended to read as follows:

(a) Management of a limited banking association is vested in ~~[the participants in proportion to each participant's contribution to capital, as adjusted periodically to properly reflect any additional contribution. The articles of association may provide that management of a limited banking association is vested in]~~ a board of managers ~~[to be]~~ elected ~~[annually]~~ by the participants as prescribed by the bylaws.

(b) A board of managers operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, and responsibilities, as a board of directors of a banking association, and a manager must meet the

1 qualifications for a director under Section 33.103. ~~[Participants~~  
2 ~~of a limited banking association may not retain management and must~~  
3 ~~elect a board of managers if:~~

4 ~~[(1) any participant is disqualified from serving as a~~  
5 ~~managing participant under Section 33.103,~~

6 ~~[(2) the limited banking association has fewer than~~  
7 ~~five or more than 25 participants, or~~

8 ~~[(3) any participant has been removed by the banking~~  
9 ~~commissioner under Subchapter A, Chapter 35.]~~

10 SECTION 33. Section 33.206, Finance Code, is amended to  
11 read as follows:

12 Sec. 33.206. INTEREST IN LIMITED BANKING ASSOCIATION;  
13 TRANSFERABILITY OF INTEREST. (a) The interest of a participant ~~[or~~  
14 ~~participant-transferee]~~ in a limited banking association is the  
15 personal property of the participant ~~[or—the~~  
16 ~~participant-transferee]~~ and may be transferred as provided by the  
17 bylaws or the participation agreement.

18 (b) The bylaws or the participation agreement may not  
19 require the consent of any other participant in order for a  
20 participant to transfer participation shares, including voting  
21 rights. ~~[A transferee of a participant's interest has the status of~~  
22 ~~a participant-transferee and does not by the transfer become a~~  
23 ~~participant or obtain a right to participate in the management of~~  
24 ~~the limited banking association.~~

25 ~~[(c) A participant-transferee is entitled to receive only~~  
26 ~~the share of profits, return of contribution, or other distributive~~  
27 ~~benefit in respect to the interest transferred to which the~~

1 ~~participant who transferred the interest would have been entitled.~~

2 ~~[(d) A participant-transferee may become a participant only~~  
3 ~~as provided by the bylaws or the participation agreement.~~

4 ~~[(e) A limited banking association may add additional~~  
5 ~~participants in the same manner as participant-transferees after~~  
6 ~~payment in full of the capital contributions to the limited banking~~  
7 ~~association payable for the issuance of additional participation~~  
8 ~~interests.]~~

9 SECTION 34. Section 33.208, Finance Code, is amended to  
10 read as follows:

11 Sec. 33.208. DISSOLUTION. The bylaws or the participation  
12 agreement may not require automatic termination, dissolution, or  
13 suspension of the limited banking association on the death,  
14 disability, bankruptcy, expulsion, or withdrawal of a participant,  
15 or on the happening of any other event other than the passage of  
16 time. ~~[(a) A limited banking association organized under this~~  
17 ~~chapter is dissolved on:~~

18 ~~[(1) the expiration of the period fixed for the~~  
19 ~~duration of the limited banking association;~~

20 ~~[(2) a vote to dissolve or the execution of a written~~  
21 ~~consent to dissolve by all full liability participants, if any, and~~  
22 ~~a sufficient number of other participants that, combined with all~~  
23 ~~full liability participants, hold at least two-thirds of the~~  
24 ~~participation shares in each class in the association, or a greater~~  
25 ~~fraction as provided by the articles of association;~~

26 ~~[(3) except as provided by the articles of~~  
27 ~~association, the death, insanity, expulsion, bankruptcy,~~



1 ~~retirement, or resignation of a participant unless a majority in~~  
2 ~~interest of all remaining participants elect in writing not later~~  
3 ~~than the 90th day after the date of the event to continue the~~  
4 ~~business of the association; or~~

5 ~~[(4) the occurrence of an event of dissolution~~  
6 ~~specified in the articles of association.]~~

7 ~~[(b) A dissolution under this section is considered to be~~  
8 ~~the initiation of a voluntary liquidation under Subchapter B,~~  
9 ~~Chapter 36.]~~

10 ~~[(c) An event of dissolution described by Subsection (a)(3)~~  
11 ~~does not cancel or revoke a contract to which the bank is a party,~~  
12 ~~including a trust indenture or agreement or voluntary dissolution~~  
13 ~~under Subchapter B, Chapter 36, until the period for the remaining~~  
14 ~~participants to continue the business of the bank has expired~~  
15 ~~without the remaining participants having completed the necessary~~  
16 ~~action to continue the business of the bank.]~~

17 SECTION 35. Section 33.211, Finance Code, is amended to  
18 read as follows:

19 Sec. 33.211. APPLICATION OF OTHER PROVISIONS TO LIMITED  
20 BANKING ASSOCIATIONS. For purposes of the provisions of Subtitle A  
21 and this subtitle other than this subchapter, as the context  
22 requires:

23 (1) a manager is considered to be a director and the  
24 board of managers is considered to be the board of directors;

25 (2) ~~[if there is not a board of managers, a participant~~  
26 ~~is considered to be a director and all of the participants are~~  
27 ~~considered to be the board of directors,~~

1           ~~[(3)]~~ a participant ~~[or participant-transferee]~~ is  
2 considered to be a shareholder;

3           (3) ~~[(4)]~~ a participation share is considered to be a  
4 share ~~[of stock]~~; and

5           (4) ~~[(5)]~~ a distribution is considered to be a  
6 dividend.

7           SECTION 36. Section 34.102, Finance Code, is amended to  
8 read as follows:

9           Sec. 34.102. TRANSACTION IN BANK SHARES ~~[OR PARTICIPATION~~  
10 ~~SHARES]~~. (a) A state bank may not acquire a lien by pledge or  
11 otherwise on its own shares ~~[or participation shares]~~, or otherwise  
12 purchase or acquire title to its own shares ~~[or participation~~  
13 ~~shares]~~, except:

14           (1) as necessary to avoid or minimize a loss on a loan  
15 or investment previously made in good faith; or

16           (2) as provided by Subsection (b).

17           (b) With the prior written approval of the banking  
18 commissioner or as permitted by rules adopted under this subtitle,  
19 a state bank may acquire title to its own shares ~~[or participation~~  
20 ~~shares]~~ and hold those shares ~~[or participation shares]~~ as treasury  
21 stock. Treasury stock acquired under this subsection is not  
22 considered an equity investment.

23           (c) If a state bank acquires a lien on or title to its own  
24 shares ~~[or participation shares]~~ under this section, the lien may  
25 not by its original terms extend for more than two years. Except  
26 with the prior written approval of the banking commissioner, the  
27 bank may not hold title to its own shares ~~[or participation shares]~~

1 for more than one year.

2 (d) A state bank may make loans on the collateral security  
3 of securities issued by an affiliate, if the loan is subject to and  
4 in compliance with the provisions of Sections 23A and 23B, Federal  
5 Reserve Act (12 U.S.C. Sections 371c and 371c-1), as amended,  
6 applicable to nonmember insured state banks by virtue of Section  
7 18(j)(1), Federal Deposit Insurance Act (12 U.S.C. Section  
8 1828(j)(1)), as amended.

9 SECTION 37. Sections 34.104(b) and (c), Finance Code, are  
10 amended to read as follows:

11 (b) If the portfolio of an investment company described by  
12 Subsection (a) consists wholly of investments in which the bank  
13 could invest directly without limitation [~~under Section~~  
14 ~~34.101(e)~~], the bank may invest in the investment company without  
15 limitation.

16 (c) The bank may invest not more than an amount equal to 15  
17 percent of the bank's capital and certified surplus in an  
18 investment company described by Subsection (a) the portfolio of  
19 which contains an investment or obligation in which the bank could  
20 not invest directly without limitation under this chapter [~~that is~~  
21 ~~subject to the limitations of Section 34.101(d) or 34.201(a)~~].

22 SECTION 38. Section 34.105(c)(2), Finance Code, is amended  
23 to read as follows:

24 (2) "Banker's bank" means a bank insured by the Federal  
25 Deposit Insurance Corporation or a bank holding company that owns  
26 or controls such an insured bank if:

27 (A) all equity securities of the bank or bank

1 holding company, other than director's qualifying shares or shares  
2 issued under an employee compensation plan, are owned by depository  
3 institutions or depository institution holding companies; and

4 (B) the bank or bank holding company and all its  
5 subsidiaries are engaged exclusively in providing:

6 (i) services to or for other depository  
7 institutions, depository institution holding companies, and the  
8 directors, ~~[managers, managing participants,]~~ officers, and  
9 employees of other depository institutions and depository  
10 institution holding companies; and

11 (ii) correspondent banking services at the  
12 request of other depository institutions, depository institution  
13 holding companies, or their subsidiaries.

14 SECTION 39. Sections 34.202(a) and (d), Finance Code, are  
15 amended to read as follows:

16 (a) An officer, director, ~~[manager, managing participant,]~~  
17 or employee of a state bank who approves or participates in the  
18 approval of a loan with actual knowledge that the loan violates  
19 Section 34.201 is jointly and severally liable to the bank for the  
20 lesser of the amount by which the loan exceeded applicable lending  
21 limits or the bank's actual loss. The person remains liable for  
22 that amount until the loan and all prior indebtedness of the  
23 borrower to the bank have been fully repaid.

24 (d) For purposes of this section, an officer, director,  
25 ~~[manager, managing participant,]~~ or employee of a state bank is  
26 presumed to know the amount of the bank's lending limit under  
27 Section 34.201(a) and the amount of the borrower's aggregate

1 outstanding indebtedness to the bank immediately before a new loan  
2 or extension of credit to that borrower.

3 SECTION 40. Section 34.203(b), Finance Code, is amended to  
4 read as follows:

5 (b) This section does not authorize the bank to charge its  
6 borrower for payment of fees and expenses to an officer or [7]  
7 director [~~, manager, or managing participant~~] of the bank for  
8 services rendered in the person's capacity as an officer or [7]  
9 director [~~, manager, or managing participant~~].

10 SECTION 41. Sections 35.002(a) and (b), Finance Code, are  
11 amended to read as follows:

12 (a) The banking commissioner has grounds to issue a cease  
13 and desist order to an officer, employee, or director [~~, manager, or~~  
14 ~~managing participant~~] of a state bank, or the bank itself acting  
15 through an authorized person, if the banking commissioner  
16 determines from examination or other credible evidence that the  
17 bank or person directly or indirectly has:

18 (1) violated this subtitle or another applicable law;  
19 (2) engaged in a breach of trust or other fiduciary  
20 duty;

21 (3) refused to submit to examination or examination  
22 under oath;

23 (4) conducted business in an unsafe or unsound manner;  
24 or

25 (5) violated a condition of the bank's charter or an  
26 agreement between the bank or the person and the banking  
27 commissioner or the department.

1           (b) If the banking commissioner has grounds for action under  
2 Subsection (a) and finds that an order to cease and desist from a  
3 violation appears to be necessary and in the best interest of the  
4 bank involved and its depositors, creditors, and shareholders [~~or~~  
5 ~~participants~~], the banking commissioner may serve a proposed cease  
6 and desist order on the bank and each person who committed or  
7 participated in the action. The proposed order must:

8           (1) be delivered by personal delivery or by registered  
9 or certified mail, return receipt requested;

10           (2) state with reasonable certainty the grounds for  
11 the proposed order; and

12           (3) state the effective date of the order, which may  
13 not be before the 21st day after the date the proposed order is  
14 delivered or mailed.

15           SECTION 42. Sections 35.003(a) and (b), Finance Code, are  
16 amended to read as follows:

17           (a) The banking commissioner has grounds to remove a present  
18 or former officer, director, [~~manager, managing participant,~~] or  
19 employee of a state bank from office or employment in, or prohibit a  
20 controlling shareholder [~~or participant~~] or other person  
21 participating in the affairs of a state bank from further  
22 participation in the affairs of, a state bank if the banking  
23 commissioner determines from examination or other credible  
24 evidence that:

25           (1) the person:

26                   (A) intentionally committed or participated in  
27 commission of an act described by Section 35.002(a) with regard to

1 the affairs of the bank; or

2 (B) violated a final cease and desist order  
3 issued in response to the same or a similar act;

4 (2) because of this action by the person:

5 (A) the bank has suffered or will probably suffer  
6 financial loss or other damage;

7 (B) the interests of the bank's depositors have  
8 been or could be prejudiced; or

9 (C) the person has received financial gain or  
10 other benefit by reason of the action; and

11 (3) the action:

12 (A) involves personal dishonesty on the part of  
13 the person; or

14 (B) demonstrates wilful or continuing disregard  
15 for the safety or soundness of the bank.

16 (b) If the banking commissioner has grounds for action under  
17 Subsection (a) and finds that a removal or prohibition order  
18 appears to be necessary and in the best interest of the bank  
19 involved and its depositors, creditors, and shareholders [~~or~~  
20 ~~participants~~], the banking commissioner may serve a proposed  
21 removal or prohibition order, as appropriate, on a person alleged  
22 to have committed or participated in the action. The proposed order  
23 must:

24 (1) be delivered by personal delivery or by registered  
25 or certified mail, return receipt requested;

26 (2) state with reasonable certainty the grounds for  
27 removal or prohibition; and

1           (3) state the effective date of the order, which may  
2 not be before the 21st day after the date the proposed order is  
3 delivered or mailed.

4           SECTION 43. Section 35.005(a), Finance Code, is amended to  
5 read as follows:

6           (a) If the banking commissioner believes that immediate  
7 action is necessary to prevent immediate and irreparable harm to  
8 the bank and its depositors, creditors, and shareholders [~~or~~  
9 ~~participants~~], the banking commissioner may issue one or more cease  
10 and desist, removal, or prohibition orders as emergency orders to  
11 become effective immediately on service without prior notice or  
12 hearing. Service must be by personal delivery or by registered or  
13 certified mail, return receipt requested.

14          SECTION 44. Section 35.006, Finance Code, is amended to  
15 read as follows:

16          Sec. 35.006. COPY OF LETTER OR ORDER IN BANK RECORDS. A  
17 copy of a determination letter, proposed order, emergency order, or  
18 final order issued by the banking commissioner under this  
19 subchapter shall be immediately brought to the attention of the  
20 board of the affected bank, regardless of whether the bank is a  
21 party, and filed in the minutes of the board. Each director[~~7~~  
22 ~~manager, or managing participant~~] shall immediately certify to the  
23 banking commissioner in writing that the certifying person has read  
24 and understood the determination letter, proposed order, emergency  
25 order, or final order. The required certification may not be  
26 considered an admission of a person in a subsequent legal or  
27 administrative proceeding.



1           SECTION 45. Section 35.101(a), Finance Code, is amended to  
2 read as follows:

3           (a) The banking commissioner by order may appoint a  
4 supervisor over a state bank if the banking commissioner determines  
5 from examination or other credible evidence that the bank is in  
6 hazardous condition and that an order of supervision appears to be  
7 necessary and in the best interest of the bank and its depositors,  
8 creditors, and shareholders [~~or participants~~], or the public.

9           SECTION 46. Section 35.102(a), Finance Code, is amended to  
10 read as follows:

11           (a) The banking commissioner by order may appoint a  
12 conservator for a state bank if the banking commissioner determines  
13 from examination or other credible evidence that the bank is in  
14 hazardous condition and immediate and irreparable harm is  
15 threatened to the bank, its depositors, creditors, or shareholders  
16 [~~or participants~~], or the public.

17           SECTION 47. Section 35.106, Finance Code, is amended to  
18 read as follows:

19           Sec. 35.106. AUTHORITY OF SUPERVISOR. During a period of  
20 supervision, a bank, without the prior approval of the banking  
21 commissioner or the supervisor or as otherwise permitted or  
22 restricted by the order of supervision, may not:

23               (1) dispose of, sell, transfer, convey, or encumber  
24 the bank's assets;

25               (2) lend or invest the bank's money;

26               (3) incur a debt, obligation, or liability; or

27               (4) pay a cash dividend to the bank's shareholders [~~or~~

1 ~~participants~~].

2       SECTION 48. Section 35.107(b), Finance Code, is amended to  
3 read as follows:

4       (b) Subject to any limitation in the order of appointment or  
5 other direction of the banking commissioner, the conservator has  
6 all the powers of the directors, ~~[managers, managing participants,~~  
7 officers, and shareholders ~~[or participants]~~ of the bank and shall  
8 conduct the business of the bank and take all steps the conservator  
9 considers appropriate to remove the conditions causing the  
10 conservatorship. During the conservatorship, the board may not  
11 direct or participate in the affairs of the bank.

12       SECTION 49. Section 36.101, Finance Code, is amended to  
13 read as follows:

14       Sec. 36.101. INITIATING VOLUNTARY DISSOLUTION. (a) A  
15 state bank may initiate voluntary dissolution and surrender its  
16 charter as provided by this subchapter:

17               (1) with the approval of the banking commissioner;  
18               (2) after complying with the provisions of the ~~[Texas]~~  
19 Business Organizations Code ~~[Corporation Act]~~ regarding board and  
20 shareholder approval for voluntary dissolution; and

21               (3) by filing the documents as provided by Section  
22 36.102.

23       (b) The shareholders ~~[or participants]~~ of a state bank  
24 initiating voluntary dissolution by resolution shall appoint one or  
25 more persons to act as the liquidating agent or committee. The  
26 liquidating agent or committee shall conduct the liquidation as  
27 provided by law and under the supervision of the bank's board. The

1 board, in consultation with the banking commissioner, shall require  
2 the liquidating agent or committee to give a suitable bond.

3 SECTION 50. Section 36.102, Finance Code, is amended to  
4 read as follows:

5 Sec. 36.102. FILING RESOLUTIONS WITH BANKING  
6 COMMISSIONER. After resolutions to dissolve and liquidate a state  
7 bank have been adopted by the bank's board and shareholders [~~or~~  
8 ~~participants~~], a majority of the directors[, ~~managers, or managing~~  
9 ~~participants~~] shall verify and file with the banking commissioner  
10 duplicate certified copies of:

11 (1) the resolutions of the shareholders [~~or~~  
12 ~~participants~~] that:

13 (A) are adopted at a meeting for which proper  
14 notice was given or by unanimous written consent; and

15 (B) approve the dissolution and liquidation of  
16 the bank;

17 (2) the resolutions of the board approving the  
18 dissolution and liquidation of the bank [~~if the bank is operated by~~  
19 ~~a board of directors or managers~~]; and

20 (3) a copy of the notice to the shareholders [~~or~~  
21 ~~participants~~] informing them of the meeting.

22 SECTION 51. Sections 36.108(a), (c), and (d), Finance Code,  
23 are amended to read as follows:

24 (a) After the bank has taken all of the actions specified by  
25 Sections 36.102, 36.105, and 36.107, paid all its debts and  
26 obligations, and transferred all property for which a legal  
27 claimant has been found after the time for presentation of claims

1 has expired, the bank shall make a list from its books of the names  
2 of each depositor, creditor, owner of personal property in the  
3 bank's possession or custody, or lessee of any safe, vault, or box,  
4 who has not claimed or has not received a deposit, debt, dividend,  
5 interest, balance, or other amount or property due to the person.  
6 The list must be sworn to or affirmed by a majority of the bank's  
7 board [~~or managing participants~~].

8 (c) After the banking commissioner has reviewed the list and  
9 has reconciled the unclaimed cash and property with the amounts of  
10 money and property reported and transferred to the comptroller, the  
11 banking commissioner shall allow the bank to distribute the bank's  
12 remaining assets, if any, among its shareholders[~~, participants, or~~  
13 ~~participant-transferees~~] as their ownership interests appear.

14 (d) After distribution of all remaining assets under  
15 Subsection (c), the bank shall file with the department:

16 (1) an affidavit and schedules, sworn to or affirmed  
17 by a majority of the bank's board [~~or managing participants~~],  
18 showing the distribution to each shareholder[~~, participant, or~~  
19 ~~participant-transferee~~];

20 (2) all copies of reports of examination of the bank in  
21 its possession; and

22 (3) its original charter or an affidavit stating that  
23 the original charter is lost.

24 SECTION 52. Section 36.201(b), Finance Code, is amended to  
25 read as follows:

26 (b) A majority of the bank's directors[~~, managers, or~~  
27 ~~managing participants~~] may voluntarily close the bank and place it

1 with the banking commissioner for liquidation.

2 SECTION 53. Section 36.203(c), Finance Code, is amended to  
3 read as follows:

4 (c) The receiver has all the powers of the directors,  
5 ~~[managers, managing participants,]~~ officers, and shareholders ~~[or~~  
6 ~~participants]~~ of the bank as necessary to support an action taken on  
7 behalf of the bank.

8 SECTION 54. Section 36.204(a), Finance Code, is amended to  
9 read as follows:

10 (a) A state bank, acting through a majority of its  
11 directors, ~~[managers, or managing participants,]~~ may intervene in  
12 an action filed by the banking commissioner closing a state bank to  
13 challenge the banking commissioner's closing of the bank and to  
14 enjoin the banking commissioner or other receiver from liquidating  
15 its assets. The bank must file the intervention not later than the  
16 second business day after the closing of the bank, excluding legal  
17 holidays. The court may issue an ex parte order restraining the  
18 receiver from liquidating bank assets pending a hearing on the  
19 injunction. The receiver shall comply with the restraining order  
20 but may petition the court for permission to liquidate an asset as  
21 necessary to prevent its loss or diminution pending the outcome of  
22 the injunction.

23 SECTION 55. Section 36.208, Finance Code, is amended to  
24 read as follows:

25 Sec. 36.208. RIGHTS FIXED. The rights and liabilities of  
26 the bank in liquidation and of a depositor, creditor, officer,  
27 director, ~~[manager, managing participant,]~~ employee, shareholder,

1 ~~[participant, participant-transferee]~~ agent, or other person  
2 interested in the bank's estate are fixed on the date of closing of  
3 the bank for liquidation except as otherwise directed by the court  
4 or as expressly provided otherwise by this subchapter or Subchapter  
5 D.

6 SECTION 56. Section 36.212(a), Finance Code, is amended to  
7 read as follows:

8 (a) Each bank affiliate, officer, director, ~~[manager,~~  
9 ~~managing ——— participant,~~ shareholder, ~~[participant,~~  
10 ~~participant-transferee]~~ trustee, agent, servant, employee,  
11 attorney, attorney-in-fact, or correspondent shall immediately  
12 deliver to the receiver, without cost to the receiver, any record or  
13 other property of the bank or that relates to the business of the  
14 bank.

15 SECTION 57. Section 36.213(a), Finance Code, is amended to  
16 read as follows:

17 (a) On application by the receiver, the court with or  
18 without notice may issue an injunction:

19 (1) restraining a bank officer, director, ~~[manager,~~  
20 ~~managing ——— participant,~~ shareholder, ~~[participant,~~  
21 ~~participant-transferee]~~ trustee, agent, servant, employee,  
22 attorney, attorney-in-fact, correspondent, or other person from  
23 transacting the bank's business or wasting or disposing of its  
24 property; or

25 (2) requiring the delivery of the bank's property or  
26 assets to the receiver subject to the further order of the court.

27 SECTION 58. Section 36.216, Finance Code, is amended to

read as follows:

Sec. 36.216. PREFERENCES. (a) A transfer of or lien on the property or assets of a state bank is voidable by the receiver if the transfer or lien:

(1) was made or created less than:

(A) four months before the date the bank is closed for liquidation; or

(B) one year before the date the bank is closed for liquidation if the receiving creditor was at the time an affiliate, officer, director, or ~~[manager, managing participant,~~ principal shareholder~~], or participant~~ of the bank or an affiliate of the bank;

(2) was made or created with the intent of giving to a creditor or depositor, or enabling a creditor or depositor to obtain, a greater percentage of the claimant's debt than is given or obtained by another claimant of the same class; and

(3) is accepted by a creditor or depositor having reasonable cause to believe that a preference will occur.

(b) Each bank officer, director, ~~[manager, managing participant,~~ shareholder, ~~[participant, participant-transferee,~~ trustee, agent, servant, employee, attorney-in-fact, or correspondent, or other person acting on behalf of the bank, who has participated in implementing a voidable transfer or lien, and each person receiving property or the benefit of property of the bank as a result of the voidable transfer or lien, are personally liable for the property or benefit received and shall account to the receiver for the benefit of the depositors and creditors of the bank.

1           (c) The receiver may avoid a transfer of or lien on the  
2 property or assets of a bank that a depositor, creditor, or  
3 shareholder[~~, participant, or participant-transferee~~] of the bank  
4 could have avoided and may recover the property transferred or its  
5 value from the person to whom it was transferred or from a person  
6 who has received it unless the transferee or recipient was a bona  
7 fide holder for value before the date the bank was closed for  
8 liquidation.

9           SECTION 59. Section 36.301(a), Finance Code, is amended to  
10 read as follows:

11           (a) This section applies only to a claim by a person, other  
12 than a shareholder[~~, participant, or participant-transferee~~]  
13 acting in that capacity, who has a claim against a state bank in  
14 liquidation, including a claimant with a secured claim and a  
15 claimant under a fiduciary relationship who has been ordered by the  
16 receiver to file a proof of claim under Section 36.223.

17           SECTION 60. Section 36.308, Finance Code, is amended to  
18 read as follows:

19           Sec. 36.308. OBJECTION TO APPROVED CLAIM. The receiver  
20 with court approval shall set a date for objection to an approved  
21 claim. On or before that date a depositor, creditor, other  
22 claimant, or shareholder[~~, participant, or participant-transferee~~]  
23 of the bank may file an objection to an approved claim. The  
24 objection shall be heard and determined by the court. If the  
25 objection is sustained, the court shall direct an appropriate  
26 modification of the schedule of claims.

27           SECTION 61. Section 36.310(c), Finance Code, is amended to



1 read as follows:

2 (c) As soon as practicable after the determination of all  
3 objections, appeals, and claims based on previously unliquidated or  
4 undetermined demands governed by Section 36.305, the receiver shall  
5 distribute the assets of the bank in satisfaction of approved  
6 claims other than claims asserted in a person's capacity as a  
7 shareholder~~[, participant, or participant-transferee]~~.

8 SECTION 62. Section 36.312(b), Finance Code, is amended to  
9 read as follows:

10 (b) Assets shall be distributed in the following order of  
11 priority:

12 (1) administrative expenses;

13 (2) approved claims of secured creditors to the extent  
14 of the value of the security as provided by Section 36.304;

15 (3) approved claims of beneficiaries of insufficient  
16 commingled fiduciary money or missing fiduciary property and  
17 approved claims of depositors of the bank;

18 (4) other approved claims of general creditors not  
19 falling within a higher priority under this section, including  
20 unsecured claims for taxes and debts due the federal government or a  
21 state or local government;

22 (5) approved claims of a type described by  
23 Subdivisions (1)-(4) that were not filed within the period  
24 prescribed by this subchapter; and

25 (6) claims of capital note or debenture holders or  
26 holders of similar obligations and proprietary claims of  
27 shareholders~~[, participants, participant-transferees,]~~ or other

1 owners according to the terms established by issue, class, or  
2 series.

3 SECTION 63. Sections 36.313(a), (b), (c), and (d), Finance  
4 Code, are amended to read as follows:

5 (a) If bank assets remain after the receiver has provided  
6 for unclaimed distributions and all of the liabilities of the bank  
7 in liquidation, the receiver shall distribute the remaining assets  
8 to the shareholders [~~or participants~~] of the bank.

9 (b) If the remaining assets are not liquid or if they  
10 otherwise require continuing administration, the receiver may call  
11 a meeting of the shareholders [~~or participants and~~  
12 ~~participant transferees~~] of the bank. The receiver shall give  
13 notice of the meeting:

14 (1) in a newspaper of general circulation in the  
15 county where the home office of the bank was located; and

16 (2) by written notice to the shareholders [~~or~~  
17 ~~participants and participant transferees~~] of record at their last  
18 known addresses.

19 (c) At the meeting, the shareholders [~~or participants~~]  
20 shall appoint one or more agents to take over the affairs to  
21 continue the liquidation for the benefit of the shareholders [~~or~~  
22 ~~participants and participant transferees~~]. Voting privileges are  
23 governed by the bank's bylaws and articles of association. If a  
24 quorum cannot be obtained at the meeting, the banking commissioner  
25 shall appoint an agent. An agent appointed under this subsection  
26 shall execute and file with the court a bond approved by the court,  
27 conditioned on the faithful performance of all the duties of the

1 trust.

2 (d) Under order of the court the receiver shall transfer and  
3 deliver to the agent or agents for continued liquidation under the  
4 court's supervision all assets of the bank remaining in the  
5 receiver's hands. The court shall discharge the receiver from  
6 further liability to the bank and its depositors, creditors, and  
7 shareholders~~[, participants, and participant transferees]~~.

8 SECTION 64. Section 37.004(b), Finance Code, is amended to  
9 read as follows:

10 (b) A bank or a director, ~~[manager, managing participant,~~  
11 officer, or employee of a bank does not incur liability or loss of  
12 rights because of a closing authorized by this chapter.

13 SECTION 65. Section 181.002(a)(7), Finance Code, is amended  
14 to read as follows:

15 (7) "Capital" means:

16 (A) the sum of:

17 (i) the par value of all shares or  
18 participation shares of a state trust company having a par value  
19 that have been issued;

20 (ii) the consideration set by the board ~~[in~~  
21 ~~the manner provided by the Texas Business Corporation Act]~~ for all  
22 shares or participation shares of the state trust company without  
23 par value that have been issued, except the part of that  
24 consideration that:

25 (a) has been actually received;

26 (b) is less than all of that  
27 consideration; and

1 (c) the board, by resolution adopted  
2 not later than the 60th day after the date of issuance of those  
3 shares, has allocated to surplus with the prior approval of the  
4 banking commissioner; and

5 (iii) an amount not included in  
6 Subparagraphs (i) and (ii) that has been transferred to capital of  
7 the state trust company, on the payment of a share dividend or on  
8 adoption by the board of a resolution directing that all or part of  
9 surplus be transferred to capital, minus each reduction made as  
10 permitted by law; less

11 (B) all amounts otherwise included in Paragraphs  
12 (A)(i) and (ii) that are attributable to the issuance of securities  
13 by the state trust company and that the banking commissioner  
14 determines, after notice and an opportunity for hearing, should be  
15 classified as debt rather than equity securities.

16 SECTION 66. Section 181.005(a), Finance Code, is amended to  
17 read as follows:

18 (a) The provisions of the [~~Texas~~] Business Organizations  
19 Code [~~Corporation—Act~~] regarding liability, defenses, and  
20 indemnification of a director, officer, agent, or employee apply to  
21 a director, officer, agent, or employee of a state trust company in  
22 this state. Except as limited by those provisions, a disinterested  
23 director, manager, managing participant, officer, or employee of a  
24 state trust company may not be held personally liable in an action  
25 seeking monetary damages arising from the conduct of the state  
26 trust company's affairs unless the damages resulted from the gross  
27 negligence or wilful or intentional misconduct of the person during

1 the person's term of office or service with the state trust company.

2 SECTION 67. Section 181.308(a), Finance Code, is amended to  
3 read as follows:

4 (a) Notwithstanding Section 21.218 or 101.502, [~~Article~~  
5 ~~2.44, Texas~~] Business Organizations Code [~~Corporation Act~~], a  
6 shareholder or participant of a state trust company may not  
7 examine:

8 (1) a report of examination or other confidential  
9 property of the department that is in the possession of the state  
10 trust company; or

11 (2) a book or record of the state trust company that  
12 directly or indirectly pertains to financial or other information  
13 maintained by the state trust company on behalf of its clients,  
14 including a specific item in the minutes of the board or a committee  
15 of the board regarding client account review and approval or any  
16 report that would tend to identify the state trust company's  
17 client.

18 SECTION 68. Section 182.009, Finance Code, is amended to  
19 read as follows:

20 Sec. 182.009. APPLICATION OF GENERAL CORPORATE LAW. (a)  
21 The [~~Texas~~] Business Organizations Code applies [~~Corporation Act~~  
22 ~~and the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01~~  
23 ~~et seq., Vernon's Texas Civil Statutes) are incorporated into this~~  
24 ~~chapter and apply~~] to a trust association as if it were a for-profit  
25 corporation, and [~~the Texas Limited Liability Company Act (Article~~  
26 ~~1528n, Vernon's Texas Civil Statutes) applies~~] to a limited trust  
27 association as if it were a limited liability company, [~~as if they~~

1 ~~were part of this subtitle]~~ to the extent not inconsistent with this  
2 subtitle or the proper business of a state trust company, except  
3 that:

4 (1) a reference to the secretary of state means the  
5 banking commissioner unless the context requires otherwise; and

6 (2) the right of shareholders or participants to  
7 cumulative voting in the election of directors or managers exists  
8 only if granted by the state trust company's articles of  
9 association.

10 (b) Unless expressly authorized by this subtitle or a rule  
11 of the finance commission, a state trust company may not take an  
12 action authorized by a law listed under Subsection (a) or (d)  
13 regarding its corporate status, capital structure, or a matter of  
14 corporate governance, of the type for which a law listed under  
15 Subsection (a) would require a filing with the secretary of state if  
16 the state trust company were a business corporation or a limited  
17 liability company, without submitting the filing to the banking  
18 commissioner for prior written approval of the action.

19 (c) The finance commission may adopt rules to alter or  
20 supplement the procedures and requirements of the laws listed by  
21 Subsection (a) or (d) applicable to an action taken under this  
22 chapter by a state trust company.

23 (d) Notwithstanding Subsection (a), this subsection  
24 establishes governing law with respect to a state trust company  
25 organized before January 1, 2006:

26 (1) to the extent not inconsistent with this subtitle  
27 or the proper business of a state trust company:

1                   (A) the Texas Business Corporation Act, the Texas  
2 Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq.,  
3 Vernon's Texas Civil Statutes), and any other law relating to  
4 general business corporations apply to a state trust company, and a  
5 reference in this subtitle to the Business Organizations Code is  
6 considered a reference to the prior law; and

7                   (B) the Texas Limited Liability Company Act  
8 (Article 1528n, Vernon's Texas Civil Statutes) and any other law  
9 relating to a limited liability company organized in Texas apply to  
10 a limited trust association, and a reference in this subtitle to the  
11 Business Organizations Code is considered a reference to the prior  
12 law;

13                   (2) the finance commission may establish rules  
14 permitting a state trust company to elect to be governed by the  
15 provisions of the Business Organizations Code to the extent not  
16 inconsistent with this subtitle or the proper business of a state  
17 trust company; and

18                   (3) this subsection expires January 1, 2010.

19           SECTION 69. Section 182.021, Finance Code, is amended to  
20 read as follows:

21           Sec. 182.021. ACTIVITIES NOT REQUIRING CHARTER. Subject to  
22 Subchapter C, Chapter 187, a company does not engage in the trust  
23 business in a manner requiring a state charter by:

24                   (1) acting in a manner authorized by law and in the  
25 scope of authority as an agent of a trust institution;

26                   (2) rendering a service customarily performed as an  
27 attorney in a manner approved and authorized by the Supreme Court of

1 Texas or State Bar of Texas;

2 (3) acting as trustee under a deed of trust made only  
3 as security for the payment of money or for the performance of  
4 another act;

5 (4) conducting business as a trust institution if the  
6 exercise of fiduciary powers in this state by the trust institution  
7 is not otherwise prohibited by law;

8 (5) engaging in a business regulated by the Office of  
9 Consumer Credit Commissioner, except as limited by rules adopted by  
10 the finance commission;

11 (6) receiving and distributing rents and proceeds of  
12 sale as a licensed real estate broker on behalf of a principal in a  
13 manner authorized by the Texas Real Estate Commission;

14 (7) engaging in a securities transaction or providing  
15 an investment advisory service as a licensed and registered dealer,  
16 salesman, or advisor to the extent that the activity is regulated by  
17 the State Securities Board or the Securities and Exchange  
18 Commission;

19 (8) engaging in the sale and administration of an  
20 insurance product by an insurance company or agent authorized or  
21 licensed by the Texas Department of Insurance to the extent that the  
22 activity is regulated by the Texas Department of Insurance;

23 (9) engaging in the lawful sale of prepaid funeral  
24 benefits under a permit issued by the banking commissioner under  
25 Chapter 154;

26 (10) engaging in the lawful business of a perpetual  
27 care cemetery corporation under Chapter 712, Health and Safety



Code;

(11) engaging as a principal in the money services business ~~[or agent in the lawful sale of checks]~~ under a license issued by the banking commissioner under Chapter 151 ~~[152]~~;

(12) acting as trustee under a voting trust as provided by Section 6.251, Business Organizations Code ~~[Article 2.30, Texas Business Corporation Act]~~;

(13) acting as trustee by a public, private, or independent institution of higher education or a university system, as defined by Section 61.003, Education Code, including an affiliated foundation or corporation of such an institution or system acting as trustee as provided by the Education Code;

(14) engaging in another activity expressly excluded from the application of this subtitle by rule of the finance commission;

(15) rendering services customarily performed by a certified accountant in a manner authorized by the Texas State Board of Public Accountancy;

(16) serving as trustee of a charitable trust as provided by Section 2.106, Business Organizations Code ~~[Article 2.31, Texas Non-Profit Corporation Act (Article 1396-2.31, Vernon's Texas Civil Statutes)]~~;

(17) performing escrow or settlement services if licensed or authorized under Title 11, Insurance Code;

(18) acting as a qualified intermediary in a tax deferred exchange under Section 1031, Internal Revenue Code of 1986, and applicable regulations; or

1           (19) providing permitted services at a trust  
2 representative office established in this state pursuant to  
3 Subchapter C, Chapter 187.

4           SECTION 70. Section 182.101(d), Finance Code, is amended  
5 to read as follows:

6           (d) Amendment or restatement of the articles of association  
7 of a state trust company and approval of the board and shareholders  
8 or participants must be made or obtained in accordance with the  
9 ~~[Texas]~~ Business Organizations Code ~~[Corporation Act]~~ for the  
10 amendment or restatement of a certificate of formation by a  
11 for-profit corporation ~~[articles of incorporation]~~, except as  
12 otherwise provided by this subtitle or rules adopted under this  
13 subtitle. The original and one copy of the articles of amendment or  
14 restated articles of association must be filed with the banking  
15 commissioner for approval. Unless the submission presents novel or  
16 unusual questions, the banking commissioner shall approve or reject  
17 the amendment or restatement not later than the 31st day after the  
18 date the banking commissioner considers the submission  
19 informationally complete and accepted for filing. The banking  
20 commissioner may require the submission of additional information  
21 as considered necessary to an informed decision to approve or  
22 reject any amendment or restatement of articles of association  
23 under this section.

24           SECTION 71. Section 182.102(b), Finance Code, is amended  
25 to read as follows:

26           (b) A series of shares or participation shares may be  
27 established in the manner provided by the ~~[Texas]~~ Business

1 Organizations Code [~~Corporation Act~~] as if a state trust company  
2 were a domestic corporation, but the shares or participation shares  
3 of the series may not be issued and sold except on compliance with  
4 Section 182.103. The state trust company shall file the original  
5 and one copy of the statement of action required by the [~~Texas~~]  
6 Business Organizations Code [~~Corporation Act~~] with the banking  
7 commissioner.

8 SECTION 72. Section 182.301, Finance Code, is amended to  
9 read as follows:

10 Sec. 182.301. MERGER AUTHORITY. (a) Subject to this  
11 subchapter and with the prior written approval of the banking  
12 commissioner, a state trust company may merge with another person  
13 to the same extent as a for-profit [~~business~~] corporation under the  
14 [~~Texas~~] Business Organizations Code [~~Corporation Act~~].

15 (b) Implementation of the plan of merger by the parties and  
16 approval of the board, shareholders, participants, or owners of the  
17 parties must be made or obtained as provided by the [~~Texas~~] Business  
18 Organizations Code [~~Corporation Act~~] as if the state trust company  
19 were a domestic corporation and all other parties to the merger were  
20 foreign corporations and other entities, except as otherwise  
21 provided by rules adopted under this chapter.

22 SECTION 73. Section 182.304, Finance Code, is amended to  
23 read as follows:

24 Sec. 182.304. RIGHTS OF DISSENTERS TO MERGER. A  
25 shareholder, participant, or participant-transferee may dissent  
26 from the merger to the extent and by following the procedure  
27 provided by the [~~Texas~~] Business Organizations Code [~~Corporation~~

1 ~~Act~~] or rules adopted under this subtitle.

2 SECTION 74. Section 182.501(b), Finance Code, is amended  
3 to read as follows:

4 (b) The merger or conversion must be made and approval of  
5 the state trust company's board, shareholders, or participants must  
6 be obtained in accordance with the [~~Texas~~] Business Organizations  
7 Code [~~Corporation Act~~] as if the state trust company were a domestic  
8 corporation and all other parties to the transaction, if any, were  
9 foreign corporations or other entities, except as may be otherwise  
10 provided by rule. For purposes of this subsection, a conversion is  
11 considered a merger into the successor trust institution.

12 SECTION 75. Section 183.102, Finance Code, is amended to  
13 read as follows:

14 Sec. 183.102. BYLAWS. Except as provided by Section  
15 183.207, each state trust company shall adopt bylaws and may amend  
16 its bylaws from time to time for the purposes and in accordance with  
17 the procedures set forth in the [~~Texas~~] Business Organizations Code  
18 [~~Corporation Act~~].

19 SECTION 76. Section 186.101(a), Finance Code, is amended  
20 to read as follows:

21 (a) A state trust company may initiate voluntary  
22 dissolution and surrender its charter as provided by this  
23 subchapter:

- 24 (1) with the approval of the banking commissioner;
- 25 (2) after complying with the provisions of the [~~Texas~~]  
26 Business Organizations Code [~~Corporation Act~~] regarding board and  
27 shareholder approval for voluntary dissolution; and

(3) by filing the notice of dissolution as provided by Section 186.102.

SECTION 77. Section 202.005(a), Finance Code, is amended to read as follows:

(a) The commissioner may:

(1) examine a bank holding company that controls a Texas bank to the same extent as if the bank holding company were a Texas state bank; and

(2) bring an enforcement proceeding under Chapter 35 against a bank holding company that violates or participates in a violation of Subtitle A [~~this subtitle~~], an agreement filed with the commissioner under this chapter, or a rule adopted by the finance commission or order issued by the commissioner under Subtitle A [~~this subtitle~~], as if the bank holding company were a Texas state bank.

SECTION 78. Section 274.001(1), Finance Code, is amended to read as follows:

(1) "Bank" has the meaning assigned by Section 31.002(a)(2) [~~2(c), Bank Holding Company Act of 1956 (12 U.S.C. Section 1841(c)) as amended~~], excluding a bank that does not have its main office or a branch located in this state.

SECTION 79. Section 274.003, Finance Code, is amended to read as follows:

Sec. 274.003. SUBSIDIARY TRUST COMPANY. An entity is a subsidiary trust company of a bank holding company if:

(1) the entity is a:

(A) trust company organized [~~corporation~~]

1 ~~incorporated~~] under Subchapter A, Chapter 182; or

2 (B) bank that is organized to conduct a trust  
3 business and any incidental business or to exercise trust powers;  
4 and

5 (2) more than 50 percent of the voting stock of the  
6 entity is directly or indirectly owned by the bank holding company.

7 SECTION 80. Sections 31.002(a)(28), (36), and (41),  
8 32.002(d), 33.201(b), 33.202, 33.203, 33.205, 33.207, and  
9 35.007(d), Finance Code, are repealed.

10 SECTION 81. This Act takes effect September 1, 2007.