

By: Carona  
(Flynn)

S.B. No. 804

A BILL TO BE ENTITLED

AN ACT

relating to revising provisions in certain laws governing certain banks and trust companies in this state to conform to changes in terminology made by the Business Organizations Code.

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

SECTION 1. The heading to Section 32.002, Finance Code, is amended to read as follows:

Sec. 32.002. CERTIFICATE OF FORMATION [~~ARTICLES OF ASSOCIATION~~] OF STATE BANK.

SECTION 2. Subsections (a) and (c), Section 32.002, Finance Code, are amended to read as follows:

(a) The certificate of formation [~~articles of association~~] of a state bank must be signed and acknowledged by each organizer and must contain:

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

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

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

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

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

(4) the aggregate number of shares that the bank will be authorized to issue and the number of classes of shares, which may be one or more;

1 (5) if the shares are to be divided into classes:

2 (A) the designation of each class and statement  
3 of the preferences, limitations, and relative rights of the shares  
4 of each class, which in the case of a limited banking association  
5 may be more fully set forth in the participation agreement;

6 (B) the number of shares of each class; and

7 (C) a statement of the par value of the shares of  
8 each class or that the shares are to be without par value;

9 (6) any provision limiting or denying to shareholders  
10 the preemptive right to acquire additional or treasury shares of  
11 the bank;

12 (7) any provision granting the right of shareholders  
13 to cumulative voting in the election of directors;

14 (8) the aggregate amount of consideration to be  
15 received for all shares initially issued by the bank and a statement  
16 that:

17 (A) all authorized shares have been subscribed;  
18 and

19 (B) all subscriptions received have been  
20 irrevocably paid in cash;

21 (9) any provision that is otherwise required by this  
22 subtitle to be set forth in the certificate of formation [~~articles~~  
23 ~~of association~~];

24 (10) the street address of the bank's initial home  
25 office;

26 (11) the number of directors constituting the initial  
27 board and the names and street addresses of the persons who are to

1 serve as directors until the first annual meeting of shareholders  
2 or until successor directors have been elected and qualified; and

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

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

10 (B) a limited liability company, in the case of a  
11 proposed limited banking association.

12 (c) A state bank, other than a private bank, organized  
13 before August 31, 1993, is considered to have perpetual existence,  
14 notwithstanding a contrary statement in its articles of  
15 association, unless after September 1, 1995, the bank amends its  
16 certificate of formation or articles of association to reaffirm its  
17 limited duration.

18 SECTION 3. Section 32.008, Finance Code, is amended to read  
19 as follows:

20 Sec. 32.008. APPLICATION OF GENERAL CORPORATE LAW.

21 (a) The Business Organizations Code applies to a banking  
22 association as if it were a for-profit corporation, and to a limited  
23 banking association as if it were a limited liability company, to  
24 the extent not inconsistent with this subtitle or the proper  
25 business of a state bank, except that:

26 (1) a reference in the Business Organizations Code to  
27 the secretary of state means the banking commissioner unless the

1 context requires otherwise; and

2 (2) the right of shareholders to cumulative voting in  
3 the election of directors exists only if granted by the bank's  
4 certificate of formation [~~articles of association~~].

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

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

19 (d) In this subtitle, a reference to a term or phrase listed  
20 in a subdivision of Section 1.006, Business Organizations Code,  
21 includes a synonymous term or phrase referenced by the same  
22 subdivision in Section 1.006 of that code.

23 SECTION 4. The heading to Subchapter B, Chapter 32, Finance  
24 Code, is amended to read as follows:

25 SUBCHAPTER B. AMENDMENT OF CERTIFICATE [~~ARTICLES~~]; CHANGES IN  
26 CAPITAL AND SURPLUS

27 SECTION 5. The heading to Section 32.101, Finance Code, is

1 amended to read as follows:

2           Sec. 32.101. AMENDMENT OR RESTATEMENT OF STATE BANK  
3 CERTIFICATE OF FORMATION [~~ARTICLES OF ASSOCIATION~~].

4           SECTION 6. Subsections (a), (b), and (c), Section 32.101,  
5 Finance Code, are amended to read as follows:

6           (a) A state bank that has been granted a certificate of  
7 authority may amend or restate its certificate of formation  
8 [~~articles of association~~] for any lawful purpose, including the  
9 creation of authorized but unissued shares or participation shares  
10 in one or more classes or series.

11           (b) An amendment authorizing the issuance of shares or  
12 participation shares in series must contain:

13                 (1) the designation of each series and a statement of  
14 any variations in the preferences, limitations, and relative rights  
15 among series to the extent that the preferences, limitations, and  
16 relative rights are to be established in the certificate of  
17 formation [~~articles of association~~]; and

18                 (2) a statement of any authority to be vested in the  
19 bank's board to establish series and determine the preferences,  
20 limitations, and relative rights of each series.

21           (c) Amendment or restatement of the certificate of  
22 formation [~~articles of association~~] of a state bank and approval of  
23 the bank's board and shareholders must be made or obtained as  
24 provided by the Business Organizations Code [~~for the amendment or~~  
25 ~~restatement of a certificate of formation by a for-profit~~  
26 ~~corporation~~] except as otherwise provided by this subtitle or rules  
27 adopted under this subtitle. The original and one copy of the

1 certificate [~~articles~~] of amendment or restated certificate of  
2 formation [~~articles of association~~] must be filed with the banking  
3 commissioner for approval. Unless the submission presents novel or  
4 unusual questions, the banking commissioner shall approve or reject  
5 the amendment or restatement not later than the 31st day after the  
6 date the banking commissioner considers the submission  
7 informationally complete and accepted for filing. The banking  
8 commissioner may require the submission of additional information  
9 as considered necessary to an informed decision to approve or  
10 reject any amendment or restatement of a certificate of formation  
11 [~~articles of association~~] under this section. If the banking  
12 commissioner finds that the amendment or restatement conforms to  
13 law and any conditions imposed by the banking commissioner, and any  
14 required filing fee has been paid, the banking commissioner shall:

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

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

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

22 SECTION 7. Subsections (a) and (b), Section 32.102, Finance  
23 Code, are amended to read as follows:

24 (a) If the certificate of formation [~~articles of~~  
25 ~~association~~] expressly gives [~~give~~] the board of a state bank  
26 authority to establish shares in series and determine the  
27 preferences, limitations, and relative rights of each series, the

1 board may do so only in compliance with this section and any rules  
2 adopted under this subtitle.

3 (b) A series of shares may be established in the manner  
4 provided by the Business Organizations Code [~~as if the state bank~~  
5 ~~were a domestic entity~~], but the shares of the series may not be  
6 issued and sold without the prior written approval of the banking  
7 commissioner under Section 32.103. The bank shall file the  
8 original and one copy of the statement of action required by the  
9 Business Organizations Code with the banking commissioner.

10 SECTION 8. Subsection (b), Section 32.301, Finance Code, is  
11 amended to read as follows:

12 (b) Implementation of the merger by the parties and approval  
13 of the board, shareholders, or owners of the parties must be made or  
14 obtained in accordance with the Business Organizations Code as if  
15 the state bank were a filing [~~domestic~~] entity and all other parties  
16 to the merger were foreign entities, except as may be otherwise  
17 provided by applicable rules.

18 SECTION 9. Subsections (a) and (c), Section 32.302, Finance  
19 Code, are amended to read as follows:

20 (a) If the merger is subject to the prior written approval  
21 of the banking commissioner, the original certificate [~~articles~~] of  
22 merger and a number of copies of the certificate [~~articles~~] equal to  
23 the number of surviving, new, and acquiring entities must be filed  
24 with the banking commissioner. On this filing, the banking  
25 commissioner shall investigate the condition of the merging  
26 parties. The banking commissioner may require the submission of  
27 additional information the banking commissioner determines

1 necessary to an informed decision to approve or reject a merger  
2 under this subchapter.

3 (c) If the banking commissioner approves the merger and  
4 finds that all required filing fees and investigative costs have  
5 been paid, the banking commissioner shall:

6 (1) endorse the face of the original and each copy of  
7 the certificate [~~articles~~] of merger with the date of approval and  
8 the word "Approved";

9 (2) file the original of the certificate [~~articles~~] of  
10 merger in the department's records; and

11 (3) deliver a certified copy of the certificate  
12 [~~articles~~] of merger to each surviving, new, or acquiring entity.

13 SECTION 10. Subsection (b), Section 32.501, Finance Code,  
14 is amended to read as follows:

15 (b) The merger or conversion by the state bank must be made  
16 and approval of its board and shareholders must be obtained in  
17 accordance with the Business Organizations Code as if the state  
18 bank were a filing [~~domestic~~] entity and all other parties to the  
19 transaction, if any, were foreign entities, except as provided by  
20 rule. For purposes of this subsection, a conversion is considered a  
21 merger into the successor form of financial institution.

22 SECTION 11. Subsection (c), Section 33.204, Finance Code,  
23 is amended to read as follows:

24 (c) The certificate of formation [~~articles of association~~],  
25 bylaws, and participation agreement of a limited banking  
26 association may use "director" instead of "manager" and "board"  
27 instead of "board of managers."



1 SECTION 12. Section 33.209, Finance Code, is amended to  
2 read as follows:

3 Sec. 33.209. ALLOCATION OF PROFITS AND LOSSES. The profits  
4 and losses of a limited banking association may be allocated among  
5 the participants and among classes of participants as provided by  
6 the participation agreement. Without the prior written approval of  
7 the banking commissioner to use a different allocation method, the  
8 profits and losses must be allocated according to the relative  
9 interests of the participants as reflected in the certificate of  
10 formation [~~articles of association~~] and related documents filed  
11 with and approved by the banking commissioner.

12 SECTION 13. Section 33.210, Finance Code, is amended to  
13 read as follows:

14 Sec. 33.210. DISTRIBUTIONS. Subject to Section 32.103,  
15 distributions of cash or other assets of a limited banking  
16 association may be made to the participants as provided by the  
17 participation agreement. Without the prior written approval of the  
18 banking commissioner to use a different distribution method,  
19 distributions must be made to the participants according to the  
20 relative interests of the participants as reflected in the  
21 certificate of formation [~~articles of association~~] and related  
22 documents filed with and approved by the banking commissioner.

23 SECTION 14. Subsection (a), Section 36.312, Finance Code,  
24 is amended to read as follows:

25 (a) The priority of distribution of assets from the estate  
26 of a bank the deposits of which are not insured by the Federal  
27 Deposit Insurance Corporation or its successor shall be in

1 accordance with the order of each class as provided by this section.  
2 Every claim in each class shall be paid in full, or adequate money  
3 shall be retained for that payment, before a member of the next  
4 class receives any payment. A subclass may not be established  
5 within a class, except for a preference or subordination within a  
6 class expressly created by contract or other instrument or in the  
7 certificate of formation [~~articles of association~~].

8 SECTION 15. Subsection (c), Section 36.313, Finance Code,  
9 is amended to read as follows:

10 (c) At the meeting, the shareholders shall appoint one or  
11 more agents to take over the affairs to continue the liquidation for  
12 the benefit of the shareholders. Voting privileges are governed by  
13 the bank's bylaws and certificate of formation [~~articles of~~  
14 ~~association~~]. If a quorum cannot be obtained at the meeting, the  
15 banking commissioner shall appoint an agent. An agent appointed  
16 under this subsection shall execute and file with the court a bond  
17 approved by the court, conditioned on the faithful performance of  
18 all the duties of the trust.

19 SECTION 16. The heading to Section 182.002, Finance Code,  
20 is amended to read as follows:

21 Sec. 182.002. CERTIFICATE OF FORMATION [~~ARTICLES OF~~  
22 ~~ASSOCIATION~~] OF STATE TRUST COMPANY.

23 SECTION 17. Subsections (a) and (c), Section 182.002,  
24 Finance Code, are amended to read as follows:

25 (a) The certificate of formation [~~articles of association~~]  
26 of a state trust company must be signed and acknowledged by each  
27 organizer and must contain:

1           (1) the name of the state trust company, subject to  
2 Subsection (b);

3           (2) the period of the state trust company's duration,  
4 which may be perpetual;

5           (3) the powers of the state trust company, which may be  
6 stated as:

7                 (A) all powers granted to a state trust company  
8 in this state; or

9                 (B) a list of the specific powers that the state  
10 trust company chooses and is authorized to exercise;

11           (4) the aggregate number of shares, or participation  
12 shares in the case of a limited trust association, that the state  
13 trust company will be authorized to issue, and the number of classes  
14 of shares or participation shares, which may be one or more;

15           (5) if the shares or participation shares are to be  
16 divided into classes:

17                 (A) the designation of each class and statement  
18 of the preferences, limitations, and relative rights of the shares  
19 or participation shares of each class, which in the case of a  
20 limited trust association may be more fully set forth in the  
21 participation agreement;

22                 (B) the number of shares or participation shares  
23 of each class; and

24                 (C) a statement of the par value of the shares or  
25 participation shares of each class or that the shares or  
26 participation shares are to be without par value;

27           (6) any provision limiting or denying to shareholders

1 or participants the preemptive right to acquire additional or  
2 treasury shares or participation shares of the state trust company;

3 (7) any provision granting the right of shareholders  
4 or participants to cumulative voting in the election of directors  
5 or managers;

6 (8) the aggregate amount of consideration to be  
7 received for all shares or participation shares initially issued by  
8 the state trust company and a statement that:

9 (A) all authorized shares or participation  
10 shares have been subscribed; and

11 (B) all subscriptions received have been  
12 irrevocably paid in cash;

13 (9) any provision consistent with law that the  
14 organizers elect to set forth in the certificate of formation  
15 [~~articles of association~~] for the regulation of the internal  
16 affairs of the state trust company or that is otherwise required by  
17 this subtitle to be set forth in the certificate of formation  
18 [~~articles of association~~];

19 (10) the street address of the state trust company's  
20 home office; and

21 (11) either:

22 (A) the number of directors or managers  
23 constituting the initial board and the names and street addresses  
24 of the persons who are to serve as directors or managers until the  
25 first annual meeting of shareholders or participants or until  
26 successor directors or managers have been elected and qualified; or

27 (B) the statement described by Subsection (c).

1 (c) The organizers of a limited trust association that will  
2 have not fewer than five or more than 25 participants may include in  
3 the certificate of formation [~~articles of association~~] a statement  
4 that management is vested in a board composed of all participants,  
5 with management authority vested in each participant in proportion  
6 to the participant's contribution to capital as adjusted from time  
7 to time to properly reflect any additional contribution, and the  
8 names and street addresses of the persons who are to be the initial  
9 managing participants.

10 SECTION 18. Section 182.009, Finance Code, is amended to  
11 read as follows:

12 Sec. 182.009. APPLICATION OF GENERAL CORPORATE LAW.

13 (a) The Business Organizations Code applies to a trust association  
14 as if it were a for-profit corporation, and to a limited trust  
15 association as if it were a limited liability company, to the extent  
16 not inconsistent with this subtitle or the proper business of a  
17 state trust company, except that:

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

20 (2) the right of shareholders or participants to  
21 cumulative voting in the election of directors or managers exists  
22 only if granted by the state trust company's certificate of  
23 formation [~~articles of association~~].

24 (b) Unless expressly authorized by this subtitle or a rule  
25 of the finance commission, a state trust company may not take an  
26 action authorized by a law listed under Subsection (a) [~~or (d)~~]  
27 regarding its corporate status, capital structure, or a matter of

1 corporate governance, of the type for which a law listed under  
2 Subsection (a) would require a filing with the secretary of state if  
3 the state trust company were a filing entity [~~business corporation~~  
4 ~~or a limited liability company~~], without submitting the filing to  
5 the banking commissioner for prior written approval of the action.

6 (c) The finance commission may adopt rules to alter or  
7 supplement the procedures and requirements of the laws listed by  
8 Subsection (a) [~~or (d)~~] applicable to an action taken under this  
9 chapter by a state trust company.

10 (d) In this subtitle, a reference to a term or phrase listed  
11 in a subdivision of Section 1.006, Business Organizations Code,  
12 includes a synonymous term or phrase referenced by the same  
13 subdivision in Section 1.006 of that code.

14 SECTION 19. The heading to Subchapter B, Chapter 182,  
15 Finance Code, is amended to read as follows:

16 SUBCHAPTER B. AMENDMENT OF CERTIFICATE [~~ARTICLES~~]; CHANGES IN  
17 CAPITAL AND SURPLUS

18 SECTION 20. The heading to Section 182.101, Finance Code,  
19 is amended to read as follows:

20 Sec. 182.101. AMENDMENT OR RESTATEMENT OF STATE TRUST  
21 COMPANY CERTIFICATE OF FORMATION [~~ARTICLES OF ASSOCIATION~~].

22 SECTION 21. Subsections (a), (b), (c), and (d), Section  
23 182.101, Finance Code, are amended to read as follows:

24 (a) A state trust company that has been granted a charter  
25 under Section 182.006 or a predecessor statute may amend or restate  
26 its certificate of formation [~~articles of association~~] for any  
27 lawful purpose, including the creation of authorized but unissued

1 shares or participation shares in one or more classes or series.

2 (b) An amendment authorizing the issuance of shares or  
3 participation shares in series must contain:

4 (1) the designation of each series and a statement of  
5 any variations in the preferences, limitations, and relative rights  
6 among series to the extent that the preferences, limitations, and  
7 relative rights are to be established in the certificate of  
8 formation [~~articles of association~~]; and

9 (2) a statement of any authority to be vested in the  
10 board to establish series and determine the preferences,  
11 limitations, and relative rights of each series.

12 (c) A limited trust association may not amend its  
13 certificate of formation [~~articles of association~~] to extend its  
14 period of existence for a perpetual period or for any period of  
15 years, unless the period of existence is expressly contingent on  
16 those events resulting in dissolution of the trust association  
17 under Section 183.208.

18 (d) Amendment or restatement of the certificate of  
19 formation [~~articles of association~~] of a state trust company and  
20 approval of the board and shareholders or participants must be made  
21 or obtained in accordance with the Business Organizations Code [~~for~~  
22 ~~the amendment or restatement of a certificate of formation by a~~  
23 ~~for-profit corporation~~], except as otherwise provided by this  
24 subtitle or rules adopted under this subtitle. The original and one  
25 copy of the certificate [~~articles~~] of amendment or restated  
26 certificate of formation [~~articles of association~~] must be filed  
27 with the banking commissioner for approval. Unless the submission

1 presents novel or unusual questions, the banking commissioner shall  
2 approve or reject the amendment or restatement not later than the  
3 31st day after the date the banking commissioner considers the  
4 submission informationally complete and accepted for filing. The  
5 banking commissioner may require the submission of additional  
6 information as considered necessary to an informed decision to  
7 approve or reject any amendment or restatement of a certificate of  
8 formation [~~articles of association~~] under this section.

9 SECTION 22. Subsections (a) and (b), Section 182.102,  
10 Finance Code, are amended to read as follows:

11 (a) If the certificate of formation [~~articles of~~  
12 ~~association~~] expressly gives [~~give~~] the board authority to  
13 establish series and determine the preferences, limitations, and  
14 relative rights of each series, the board may do so only on  
15 compliance with this section and any rules adopted under this  
16 chapter.

17 (b) A series of shares or participation shares may be  
18 established in the manner provided by the Business Organizations  
19 Code [~~as if a state trust company were a domestic corporation~~], but  
20 the shares or participation shares of the series may not be issued  
21 and sold except on compliance with Section 182.103. The state trust  
22 company shall file the original and one copy of the statement of  
23 action required by the Business Organizations Code with the banking  
24 commissioner.

25 SECTION 23. Section 182.301, Finance Code, is amended to  
26 read as follows:

27 Sec. 182.301. MERGER AUTHORITY. (a) Two or more trust



1 institutions, corporations, or other entities with the authority to  
2 participate in a merger, at least one of which is a state trust  
3 company, may adopt and implement a plan of merger in accordance with  
4 this section. The merger may not be made without the prior written  
5 approval of the banking commissioner if any surviving, new, or  
6 acquiring entity that is a party to the merger or created by the  
7 terms of the merger is a state trust company or is not a trust  
8 institution [~~Subject to this subchapter and with the prior written~~  
9 ~~approval of the banking commissioner, a state trust company may~~  
10 ~~merge with another person to the same extent as a for-profit~~  
11 ~~corporation under the Business Organizations Code~~].

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

19 SECTION 24. Subsection (a), Section 182.302, Finance Code,  
20 is amended to read as follows:

21 (a) To apply for approval of a merger, the parties must  
22 submit the original certificate [~~articles~~] of merger, a number of  
23 copies of the certificate [~~articles~~] of merger equal to the number  
24 of surviving, new, and acquiring entities, and an application in  
25 the form required by the banking commissioner. The banking  
26 commissioner may require the submission of additional information  
27 as considered necessary to an informed decision.

1 SECTION 25. Subsection (a), Section 182.303, Finance Code,  
2 is amended to read as follows:

3 (a) If the banking commissioner approves the merger and  
4 finds that all required filing fees and investigative costs have  
5 been paid, the banking commissioner shall:

6 (1) endorse the face of the original and each copy of  
7 the certificate [~~articles~~] of merger with the date of approval and  
8 the word "Approved";

9 (2) file the original in the department's records; and

10 (3) deliver a certified copy of the certificate  
11 [~~articles~~] of merger to each surviving, new, or acquiring entity.

12 SECTION 26. Subsection (b), Section 182.501, Finance Code,  
13 is amended to read as follows:

14 (b) The merger or conversion must be made and approval of  
15 the state trust company's board, shareholders, or participants must  
16 be obtained in accordance with the Business Organizations Code as  
17 if the state trust company were a filing entity [~~domestic~~  
18 ~~corporation~~] and all other parties to the transaction, if any, were  
19 foreign [~~corporations or other~~] entities, except as may be  
20 otherwise provided by rule. For purposes of this subsection, a  
21 conversion is considered a merger into the successor trust  
22 institution.

23 SECTION 27. Section 183.203, Finance Code, is amended to  
24 read as follows:

25 Sec. 183.203. CONTRACTING FOR DEBT OR OBLIGATION. Except  
26 as provided by this section or the certificate of formation  
27 [~~articles of association~~] of the limited trust association, a debt,

1 liability, or other obligation may be contracted for or incurred on  
2 behalf of a limited trust association only by:

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

5 (2) a majority of the managing participants; or

6 (3) an officer or other agent vested with actual or  
7 apparent authority to contract for or incur the debt, liability, or  
8 other obligation.

9 SECTION 28. Subsections (a) and (c), Section 183.204,  
10 Finance Code, are amended to read as follows:

11 (a) Management of a limited trust association is vested in  
12 the participants in proportion to each participant's contribution  
13 to capital, as adjusted periodically to properly reflect any  
14 additional contribution. The certificate of formation [~~articles of~~  
15 ~~association~~] may provide that management of a limited trust  
16 association is vested in a board of managers to be elected annually  
17 by the participants as prescribed by the bylaws or the  
18 participation agreement.

19 (c) The certificate of formation [~~articles of association~~],  
20 bylaws, and participation agreement of a limited trust association  
21 may use the term "director" instead of "manager" and the term  
22 "board" instead of "board of managers."

23 SECTION 29. Subsections (a) and (c), Section 183.205,  
24 Finance Code, are amended to read as follows:

25 (a) Except as otherwise provided by this chapter, a  
26 participant may not receive from a limited trust association any  
27 part of the participant's contribution to capital unless:

1           (1) all liabilities of the limited trust association,  
2 except liabilities to participants on account of contribution to  
3 capital, have been paid;

4           (2) after the withdrawal or reduction, sufficient  
5 property of the limited trust association will remain to pay all  
6 liabilities of the limited trust association, except liabilities to  
7 participants on account of contribution to capital;

8           (3) all participants consent; or

9           (4) the certificate of formation is [~~articles of~~  
10 ~~association are~~] canceled or amended to set out the withdrawal or  
11 reduction.

12           (c) A participant may demand the return of the participant's  
13 contribution to capital only in cash unless a different form of  
14 return of the contribution is allowed by the certificate of  
15 formation [~~articles of association~~] or by the unanimous consent of  
16 all participants.

17           SECTION 30. Subsection (a), Section 183.207, Finance Code,  
18 is amended to read as follows:

19           (a) A limited trust association in which management is  
20 retained by the participants is not required to adopt bylaws if the  
21 provisions required by law to be contained in the bylaws are  
22 contained in the certificate of formation [~~articles of association~~]  
23 or the participation agreement.

24           SECTION 31. Subsection (a), Section 183.208, Finance Code,  
25 is amended to read as follows:

26           (a) A limited trust association organized under this  
27 chapter is dissolved on:

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

3           (2) a vote to dissolve or the execution of a written  
4 consent to dissolve by all full liability participants, if any, and  
5 a sufficient number of other participants that, combined with all  
6 full liability participants, hold at least two-thirds of the  
7 participation shares in each class in the association, or a greater  
8 fraction as provided by the certificate of formation [~~articles of~~  
9 ~~association~~];

10          (3) except as provided by the certificate of formation  
11 [~~articles of association~~], the death, insanity, expulsion,  
12 bankruptcy, retirement, or resignation of a participant unless a  
13 majority in interest of all remaining participants elect in writing  
14 not later than the 90th day after the date of the event to continue  
15 the business of the association; or

16          (4) the occurrence of an event of dissolution  
17 specified in the certificate of formation [~~articles of~~  
18 ~~association~~].

19          SECTION 32. Section 183.209, Finance Code, is amended to  
20 read as follows:

21          Sec. 183.209. ALLOCATION OF PROFITS AND LOSSES. The  
22 profits and losses of a limited trust association may be allocated  
23 among the participants and among classes of participants as  
24 provided by the participation agreement. Without the prior written  
25 approval of the banking commissioner to use a different allocation  
26 method, the profits and losses must be allocated according to the  
27 relative interests of the participants as reflected in the

1 certificate of formation [~~articles of association~~] and related  
2 documents filed with and approved by the banking commissioner.

3 SECTION 33. Section 183.210, Finance Code, is amended to  
4 read as follows:

5 Sec. 183.210. DISTRIBUTIONS. Subject to Section 182.103,  
6 distributions of cash or other assets of a limited trust  
7 association may be made to the participants as provided by the  
8 participation agreement. Without the prior written approval of the  
9 banking commissioner to use a different distribution method,  
10 distributions must be made to the participants according to the  
11 relative interests of the participants as reflected in the  
12 certificate of formation [~~articles of association~~] and related  
13 documents filed with and approved by the banking commissioner.

14 SECTION 34. Subsection (a), Section 186.312, Finance Code,  
15 is amended to read as follows:

16 (a) The priority of distribution of assets from the estate  
17 of a state trust company the trust deposits of which are not insured  
18 by the Federal Deposit Insurance Corporation or its successor shall  
19 be in accordance with the order of each class as provided by this  
20 section. Every claim in each class shall be paid in full, or  
21 adequate money shall be retained for that payment, before a member  
22 of the next class may receive any payment. A subclass may not be  
23 established within a class, except for a preference or  
24 subordination within a class expressly created by contract or other  
25 instrument or in the certificate of formation [~~articles of~~  
26 ~~association~~].

27 SECTION 35. Subsection (c), Section 186.313, Finance Code,

1 is amended to read as follows:

2 (c) At the meeting, the shareholders or participants shall  
3 appoint one or more agents to take over the affairs to continue the  
4 liquidation for the benefit of the shareholders or participants and  
5 participant-transferees. Voting privileges are governed by the  
6 state trust company's bylaws and certificate of formation [~~articles~~  
7 ~~of association~~]. If a quorum cannot be obtained at the meeting, the  
8 banking commissioner shall appoint an agent. An agent appointed  
9 under this subsection shall execute and file with the court a bond  
10 approved by the court, conditioned on the faithful performance of  
11 all the duties of the trust.

12 SECTION 36. Subsection (a), Section 204.101, Finance Code,  
13 is amended to read as follows:

14 (a) A foreign bank that desires to establish and maintain a  
15 Texas state branch or agency shall submit an application to the  
16 commissioner. The application must:

17 (1) be accompanied by all application fees and  
18 deposits required by applicable rules;

19 (2) be in the form specified by the commissioner;

20 (3) be subscribed and acknowledged by an officer of  
21 the foreign bank;

22 (4) have attached:

23 (A) a complete copy of the foreign bank's  
24 application to the Board of Governors of the Federal Reserve System  
25 under Section 7(d), International Banking Act (12 U.S.C. Section  
26 3105(d));

27 (B) an authenticated copy of the foreign bank's

1 certificate of formation [~~articles of incorporation~~] and bylaws or  
2 other constitutive documents and, if the copy is in a language other  
3 than English, an English translation of the document, under the  
4 oath of the translator; and

5 (C) evidence of compliance with Section 201.102;  
6 (5) be submitted when the federal application is  
7 submitted to the board of governors; and

8 (6) include on its face or in accompanying documents:

9 (A) the name of the foreign bank;

10 (B) the street address where the principal office  
11 of the Texas state branch or agency is to be located and, if  
12 different, the Texas state branch or agency's mailing address;

13 (C) the name and qualifications of each officer  
14 and director of the foreign bank who will have control of all or  
15 part of the business and affairs of the Texas state branch or  
16 agency;

17 (D) a detailed statement of the foreign bank's  
18 financial condition as of a date not more than 360 days before the  
19 date of the application; and

20 (E) other information that:

21 (i) is necessary to enable the commissioner  
22 to make the findings listed in Section 204.103;

23 (ii) is required by rules adopted under  
24 this subtitle; or

25 (iii) the commissioner reasonably  
26 requests.

27 SECTION 37. Section 204.107, Finance Code, is amended to



1 read as follows:

2           Sec. 204.107. FILING OF AMENDMENTS TO CERTIFICATE OF  
3 FORMATION [~~ARTICLES OF INCORPORATION~~]. If the certificate of  
4 formation [~~articles of incorporation~~] of a foreign bank licensed to  
5 maintain a Texas state branch or agency is [~~are~~] amended, the  
6 foreign bank shall promptly file with the commissioner a copy of the  
7 amendment, duly authenticated by the proper officer of the country  
8 of the foreign bank's organization. The filing does not enlarge or  
9 alter the business the foreign bank is authorized to pursue in this  
10 state, authorize the foreign bank to transact business in this  
11 state under a name other than the name set forth in its license, or  
12 extend the duration of its corporate existence.

13           SECTION 38. Subsection (a), Section 204.201, Finance Code,  
14 is amended to read as follows:

15           (a) A foreign bank may establish a Texas representative  
16 office if the foreign bank files with the commissioner a verified  
17 statement of registration. A statement of registration must:

18                   (1) be accompanied by all registration fees and  
19 deposits required by rule;

20                   (2) be in the form specified by the commissioner;

21                   (3) be subscribed and acknowledged by an officer of  
22 the foreign bank;

23                   (4) contain as an exhibit or attachment:

24                           (A) a copy of the foreign bank's notice or  
25 application submitted to the Board of Governors of the Federal  
26 Reserve System under Section 10, International Banking Act (12  
27 U.S.C. Section 3107), and, when issued, the order or notification

1 from the board of governors indicating that the representative  
2 office has been approved;

3 (B) an authenticated copy of the foreign bank's  
4 certificate of formation [~~articles of incorporation~~] and bylaws or  
5 other constitutive documents and, if the copy is in a language other  
6 than English, an English translation of the document, under the  
7 oath of the translator; and

8 (C) evidence of compliance with Section 201.102;

9 (5) be submitted when the federal notice or  
10 application is submitted to the board of governors; and

11 (6) directly or in exhibits or attachments contain:

12 (A) the name of the foreign bank;

13 (B) the street address and post office address  
14 where each Texas representative office is to be located in this  
15 state;

16 (C) the name and qualifications of each officer  
17 and director of the foreign bank who will have charge of any aspect  
18 of the business and affairs of the Texas representative office;

19 (D) a complete and detailed statement of the  
20 financial condition of the foreign bank as of a date not more than  
21 360 days before the date of the filing; and

22 (E) other information the commissioner requires.

23 SECTION 39. This Act takes effect immediately if it  
24 receives a vote of two-thirds of all the members elected to each  
25 house, as provided by Section 39, Article III, Texas Constitution.  
26 If this Act does not receive the vote necessary for immediate  
27 effect, this Act takes effect September 1, 2013.