

1-1 By: Carona S.B. No. 804  
 1-2 (In the Senate - Filed February 25, 2013; March 5, 2013,  
 1-3 read first time and referred to Committee on Business and Commerce;  
 1-4 March 13, 2013, reported favorably by the following vote: Yeas 8,  
 1-5 Nays 0; March 13, 2013, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11			X	
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to revising provisions in certain laws governing certain  
 1-20 banks and trust companies in this state to conform to changes in  
 1-21 terminology made by the Business Organizations Code.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. The heading to Section 32.002, Finance Code, is  
 1-24 amended to read as follows:

1-25 Sec. 32.002. CERTIFICATE OF FORMATION [~~ARTICLES OF~~  
 1-26 ~~ASSOCIATION~~] OF STATE BANK.

1-27 SECTION 2. Subsections (a) and (c), Section 32.002, Finance  
 1-28 Code, are amended to read as follows:

1-29 (a) The certificate of formation [~~articles of association~~]  
 1-30 of a state bank must be signed and acknowledged by each organizer  
 1-31 and must contain:

1-32 (1) the name of the bank, subject to Subsection (b);

1-33 (2) the period of the bank's duration, which may be  
 1-34 perpetual, subject to Subsection (c);

1-35 (3) the powers of the bank, which may be stated as:

1-36 (A) all powers granted by law to a state bank; or

1-37 (B) a list of the specific powers under Section  
 1-38 32.001 that the bank chooses to exercise;

1-39 (4) the aggregate number of shares that the bank will  
 1-40 be authorized to issue and the number of classes of shares, which  
 1-41 may be one or more;

1-42 (5) if the shares are to be divided into classes:

1-43 (A) the designation of each class and statement  
 1-44 of the preferences, limitations, and relative rights of the shares  
 1-45 of each class, which in the case of a limited banking association  
 1-46 may be more fully set forth in the participation agreement;

1-47 (B) the number of shares of each class; and

1-48 (C) a statement of the par value of the shares of  
 1-49 each class or that the shares are to be without par value;

1-50 (6) any provision limiting or denying to shareholders  
 1-51 the preemptive right to acquire additional or treasury shares of  
 1-52 the bank;

1-53 (7) any provision granting the right of shareholders  
 1-54 to cumulative voting in the election of directors;

1-55 (8) the aggregate amount of consideration to be  
 1-56 received for all shares initially issued by the bank and a statement  
 1-57 that:

1-58 (A) all authorized shares have been subscribed;

1-59 and

1-60 (B) all subscriptions received have been  
 1-61 irrevocably paid in cash;

2-1 (9) any provision that is otherwise required by this  
 2-2 subtitle to be set forth in the certificate of formation [~~articles~~  
 2-3 ~~of association~~];

2-4 (10) the street address of the bank's initial home  
 2-5 office;

2-6 (11) the number of directors constituting the initial  
 2-7 board and the names and street addresses of the persons who are to  
 2-8 serve as directors until the first annual meeting of shareholders  
 2-9 or until successor directors have been elected and qualified; and

2-10 (12) subject to Section 32.008, any provision  
 2-11 consistent with law that the organizers elect to set forth in the  
 2-12 certificate of formation [~~articles of association~~] for the  
 2-13 regulation of the internal affairs of the bank, including  
 2-14 provisions permissible under the Business Organizations Code for:

2-15 (A) a for-profit corporation, in the case of a  
 2-16 proposed banking association; or

2-17 (B) a limited liability company, in the case of a  
 2-18 proposed limited banking association.

2-19 (c) A state bank, other than a private bank, organized  
 2-20 before August 31, 1993, is considered to have perpetual existence,  
 2-21 notwithstanding a contrary statement in its articles of  
 2-22 association, unless after September 1, 1995, the bank amends its  
 2-23 certificate of formation or articles of association to reaffirm its  
 2-24 limited duration.

2-25 SECTION 3. Section 32.008, Finance Code, is amended to read  
 2-26 as follows:

2-27 Sec. 32.008. APPLICATION OF GENERAL CORPORATE LAW.

2-28 (a) The Business Organizations Code applies to a banking  
 2-29 association as if it were a for-profit corporation, and to a limited  
 2-30 banking association as if it were a limited liability company, to  
 2-31 the extent not inconsistent with this subtitle or the proper  
 2-32 business of a state bank, except that:

2-33 (1) a reference in the Business Organizations Code to  
 2-34 the secretary of state means the banking commissioner unless the  
 2-35 context requires otherwise; and

2-36 (2) the right of shareholders to cumulative voting in  
 2-37 the election of directors exists only if granted by the bank's  
 2-38 certificate of formation [~~articles of association~~].

2-39 (b) The finance commission may adopt rules to limit or  
 2-40 refine the applicability of the laws listed by Subsection (a) [~~or~~  
 2-41 ~~(d)~~] to a state bank or to alter or supplement the procedures and  
 2-42 requirements of those laws applicable to an action taken under this  
 2-43 chapter.

2-44 (c) Unless expressly authorized by this subtitle or a rule  
 2-45 adopted under this subtitle, a state bank may not take an action  
 2-46 authorized by a law listed by Subsection (a) [~~or (d)~~] regarding its  
 2-47 corporate status, its capital structure, or a matter of corporate  
 2-48 governance, of the type for which those laws would require a filing  
 2-49 with the secretary of state if the bank were a filing entity  
 2-50 [~~business corporation~~], without submitting the filing to the  
 2-51 banking commissioner and obtaining the banking commissioner's  
 2-52 prior written approval of the action.

2-53 (d) In this subtitle, a reference to a term or phrase listed  
 2-54 in a subdivision of Section 1.006, Business Organizations Code,  
 2-55 includes a synonymous term or phrase referenced by the same  
 2-56 subdivision in Section 1.006 of that code.

2-57 SECTION 4. The heading to Subchapter B, Chapter 32, Finance  
 2-58 Code, is amended to read as follows:

2-59 SUBCHAPTER B. AMENDMENT OF CERTIFICATE [~~ARTICLES~~]; CHANGES IN  
 2-60 CAPITAL AND SURPLUS

2-61 SECTION 5. The heading to Section 32.101, Finance Code, is  
 2-62 amended to read as follows:

2-63 Sec. 32.101. AMENDMENT OR RESTATEMENT OF STATE BANK  
 2-64 CERTIFICATE OF FORMATION [~~ARTICLES OF ASSOCIATION~~].

2-65 SECTION 6. Subsections (a), (b), and (c), Section 32.101,  
 2-66 Finance Code, are amended to read as follows:

2-67 (a) A state bank that has been granted a certificate of  
 2-68 authority may amend or restate its certificate of formation  
 2-69 [~~articles of association~~] for any lawful purpose, including the

3-1 creation of authorized but unissued shares or participation shares  
3-2 in one or more classes or series.

3-3 (b) An amendment authorizing the issuance of shares or  
3-4 participation shares in series must contain:

3-5 (1) the designation of each series and a statement of  
3-6 any variations in the preferences, limitations, and relative rights  
3-7 among series to the extent that the preferences, limitations, and  
3-8 relative rights are to be established in the certificate of  
3-9 formation [~~articles of association~~]; and

3-10 (2) a statement of any authority to be vested in the  
3-11 bank's board to establish series and determine the preferences,  
3-12 limitations, and relative rights of each series.

3-13 (c) Amendment or restatement of the certificate of  
3-14 formation [~~articles of association~~] of a state bank and approval of  
3-15 the bank's board and shareholders must be made or obtained as  
3-16 provided by the Business Organizations Code [~~for the amendment or~~  
3-17 ~~restatement of a certificate of formation by a for-profit~~  
3-18 ~~corporation~~] except as otherwise provided by this subtitle or rules  
3-19 adopted under this subtitle. The original and one copy of the  
3-20 certificate [~~articles~~] of amendment or restated certificate of  
3-21 formation [~~articles of association~~] must be filed with the banking  
3-22 commissioner for approval. Unless the submission presents novel or  
3-23 unusual questions, the banking commissioner shall approve or reject  
3-24 the amendment or restatement not later than the 31st day after the  
3-25 date the banking commissioner considers the submission  
3-26 informationally complete and accepted for filing. The banking  
3-27 commissioner may require the submission of additional information  
3-28 as considered necessary to an informed decision to approve or  
3-29 reject any amendment or restatement of a certificate of formation  
3-30 [~~articles of association~~] under this section. If the banking  
3-31 commissioner finds that the amendment or restatement conforms to  
3-32 law and any conditions imposed by the banking commissioner, and any  
3-33 required filing fee has been paid, the banking commissioner shall:

3-34 (1) endorse the face of the original and copy of the  
3-35 amendment or restatement with the date of approval and the word  
3-36 "Approved";

3-37 (2) file the original of the amendment or restatement  
3-38 in the department's records; and

3-39 (3) deliver a certified copy of the amendment or  
3-40 restatement to the bank.

3-41 SECTION 7. Subsections (a) and (b), Section 32.102, Finance  
3-42 Code, are amended to read as follows:

3-43 (a) If the certificate of formation [~~articles of~~  
3-44 ~~association~~] expressly gives [~~give~~] the board of a state bank  
3-45 authority to establish shares in series and determine the  
3-46 preferences, limitations, and relative rights of each series, the  
3-47 board may do so only in compliance with this section and any rules  
3-48 adopted under this subtitle.

3-49 (b) A series of shares may be established in the manner  
3-50 provided by the Business Organizations Code [~~as if the state bank~~  
3-51 ~~were a domestic entity~~], but the shares of the series may not be  
3-52 issued and sold without the prior written approval of the banking  
3-53 commissioner under Section 32.103. The bank shall file the  
3-54 original and one copy of the statement of action required by the  
3-55 Business Organizations Code with the banking commissioner.

3-56 SECTION 8. Subsection (b), Section 32.301, Finance Code, is  
3-57 amended to read as follows:

3-58 (b) Implementation of the merger by the parties and approval  
3-59 of the board, shareholders, or owners of the parties must be made or  
3-60 obtained in accordance with the Business Organizations Code as if  
3-61 the state bank were a filing [~~domestic~~] entity and all other parties  
3-62 to the merger were foreign entities, except as may be otherwise  
3-63 provided by applicable rules.

3-64 SECTION 9. Subsections (a) and (c), Section 32.302, Finance  
3-65 Code, are amended to read as follows:

3-66 (a) If the merger is subject to the prior written approval  
3-67 of the banking commissioner, the original certificate [~~articles~~] of  
3-68 merger and a number of copies of the certificate [~~articles~~] equal to  
3-69 the number of surviving, new, and acquiring entities must be filed

4-1 with the banking commissioner. On this filing, the banking  
 4-2 commissioner shall investigate the condition of the merging  
 4-3 parties. The banking commissioner may require the submission of  
 4-4 additional information the banking commissioner determines  
 4-5 necessary to an informed decision to approve or reject a merger  
 4-6 under this subchapter.

4-7 (c) If the banking commissioner approves the merger and  
 4-8 finds that all required filing fees and investigative costs have  
 4-9 been paid, the banking commissioner shall:

4-10 (1) endorse the face of the original and each copy of  
 4-11 the certificate [~~articles~~] of merger with the date of approval and  
 4-12 the word "Approved";

4-13 (2) file the original of the certificate [~~articles~~] of  
 4-14 merger in the department's records; and

4-15 (3) deliver a certified copy of the certificate  
 4-16 [~~articles~~] of merger to each surviving, new, or acquiring entity.

4-17 SECTION 10. Subsection (b), Section 32.501, Finance Code,  
 4-18 is amended to read as follows:

4-19 (b) The merger or conversion by the state bank must be made  
 4-20 and approval of its board and shareholders must be obtained in  
 4-21 accordance with the Business Organizations Code as if the state  
 4-22 bank were a filing [~~domestic~~] entity and all other parties to the  
 4-23 transaction, if any, were foreign entities, except as provided by  
 4-24 rule. For purposes of this subsection, a conversion is considered a  
 4-25 merger into the successor form of financial institution.

4-26 SECTION 11. Subsection (c), Section 33.204, Finance Code,  
 4-27 is amended to read as follows:

4-28 (c) The certificate of formation [~~articles of association~~],  
 4-29 bylaws, and participation agreement of a limited banking  
 4-30 association may use "director" instead of "manager" and "board"  
 4-31 instead of "board of managers."

4-32 SECTION 12. Section 33.209, Finance Code, is amended to  
 4-33 read as follows:

4-34 Sec. 33.209. ALLOCATION OF PROFITS AND LOSSES. The profits  
 4-35 and losses of a limited banking association may be allocated among  
 4-36 the participants and among classes of participants as provided by  
 4-37 the participation agreement. Without the prior written approval of  
 4-38 the banking commissioner to use a different allocation method, the  
 4-39 profits and losses must be allocated according to the relative  
 4-40 interests of the participants as reflected in the certificate of  
 4-41 formation [~~articles of association~~] and related documents filed  
 4-42 with and approved by the banking commissioner.

4-43 SECTION 13. Section 33.210, Finance Code, is amended to  
 4-44 read as follows:

4-45 Sec. 33.210. DISTRIBUTIONS. Subject to Section 32.103,  
 4-46 distributions of cash or other assets of a limited banking  
 4-47 association may be made to the participants as provided by the  
 4-48 participation agreement. Without the prior written approval of the  
 4-49 banking commissioner to use a different distribution method,  
 4-50 distributions must be made to the participants according to the  
 4-51 relative interests of the participants as reflected in the  
 4-52 certificate of formation [~~articles of association~~] and related  
 4-53 documents filed with and approved by the banking commissioner.

4-54 SECTION 14. Subsection (a), Section 36.312, Finance Code,  
 4-55 is amended to read as follows:

4-56 (a) The priority of distribution of assets from the estate  
 4-57 of a bank the deposits of which are not insured by the Federal  
 4-58 Deposit Insurance Corporation or its successor shall be in  
 4-59 accordance with the order of each class as provided by this section.  
 4-60 Every claim in each class shall be paid in full, or adequate money  
 4-61 shall be retained for that payment, before a member of the next  
 4-62 class receives any payment. A subclass may not be established  
 4-63 within a class, except for a preference or subordination within a  
 4-64 class expressly created by contract or other instrument or in the  
 4-65 certificate of formation [~~articles of association~~].

4-66 SECTION 15. Subsection (c), Section 36.313, Finance Code,  
 4-67 is amended to read as follows:

4-68 (c) At the meeting, the shareholders shall appoint one or  
 4-69 more agents to take over the affairs to continue the liquidation for

5-1 the benefit of the shareholders. Voting privileges are governed by  
 5-2 the bank's bylaws and certificate of formation [~~articles of~~  
 5-3 ~~association~~]. If a quorum cannot be obtained at the meeting, the  
 5-4 banking commissioner shall appoint an agent. An agent appointed  
 5-5 under this subsection shall execute and file with the court a bond  
 5-6 approved by the court, conditioned on the faithful performance of  
 5-7 all the duties of the trust.

5-8 SECTION 16. The heading to Section 182.002, Finance Code,  
 5-9 is amended to read as follows:

5-10 Sec. 182.002. CERTIFICATE OF FORMATION [~~ARTICLES OF~~  
 5-11 ~~ASSOCIATION~~] OF STATE TRUST COMPANY.

5-12 SECTION 17. Subsections (a) and (c), Section 182.002,  
 5-13 Finance Code, are amended to read as follows:

5-14 (a) The certificate of formation [~~articles of association~~]  
 5-15 of a state trust company must be signed and acknowledged by each  
 5-16 organizer and must contain:

5-17 (1) the name of the state trust company, subject to  
 5-18 Subsection (b);

5-19 (2) the period of the state trust company's duration,  
 5-20 which may be perpetual;

5-21 (3) the powers of the state trust company, which may be  
 5-22 stated as:

5-23 (A) all powers granted to a state trust company  
 5-24 in this state; or

5-25 (B) a list of the specific powers that the state  
 5-26 trust company chooses and is authorized to exercise;

5-27 (4) the aggregate number of shares, or participation  
 5-28 shares in the case of a limited trust association, that the state  
 5-29 trust company will be authorized to issue, and the number of classes  
 5-30 of shares or participation shares, which may be one or more;

5-31 (5) if the shares or participation shares are to be  
 5-32 divided into classes:

5-33 (A) the designation of each class and statement  
 5-34 of the preferences, limitations, and relative rights of the shares  
 5-35 or participation shares of each class, which in the case of a  
 5-36 limited trust association may be more fully set forth in the  
 5-37 participation agreement;

5-38 (B) the number of shares or participation shares  
 5-39 of each class; and

5-40 (C) a statement of the par value of the shares or  
 5-41 participation shares of each class or that the shares or  
 5-42 participation shares are to be without par value;

5-43 (6) any provision limiting or denying to shareholders  
 5-44 or participants the preemptive right to acquire additional or  
 5-45 treasury shares or participation shares of the state trust company;

5-46 (7) any provision granting the right of shareholders  
 5-47 or participants to cumulative voting in the election of directors  
 5-48 or managers;

5-49 (8) the aggregate amount of consideration to be  
 5-50 received for all shares or participation shares initially issued by  
 5-51 the state trust company and a statement that:

5-52 (A) all authorized shares or participation  
 5-53 shares have been subscribed; and

5-54 (B) all subscriptions received have been  
 5-55 irrevocably paid in cash;

5-56 (9) any provision consistent with law that the  
 5-57 organizers elect to set forth in the certificate of formation  
 5-58 [~~articles of association~~] for the regulation of the internal  
 5-59 affairs of the state trust company or that is otherwise required by  
 5-60 this subtitle to be set forth in the certificate of formation  
 5-61 [~~articles of association~~];

5-62 (10) the street address of the state trust company's  
 5-63 home office; and

5-64 (11) either:

5-65 (A) the number of directors or managers  
 5-66 constituting the initial board and the names and street addresses  
 5-67 of the persons who are to serve as directors or managers until the  
 5-68 first annual meeting of shareholders or participants or until  
 5-69 successor directors or managers have been elected and qualified; or

6-1 (B) the statement described by Subsection (c).

6-2 (c) The organizers of a limited trust association that will  
6-3 have not fewer than five or more than 25 participants may include in  
6-4 the certificate of formation [~~articles of association~~] a statement  
6-5 that management is vested in a board composed of all participants,  
6-6 with management authority vested in each participant in proportion  
6-7 to the participant's contribution to capital as adjusted from time  
6-8 to time to properly reflect any additional contribution, and the  
6-9 names and street addresses of the persons who are to be the initial  
6-10 managing participants.

6-11 SECTION 18. Section 182.009, Finance Code, is amended to  
6-12 read as follows:

6-13 Sec. 182.009. APPLICATION OF GENERAL CORPORATE LAW.

6-14 (a) The Business Organizations Code applies to a trust association  
6-15 as if it were a for-profit corporation, and to a limited trust  
6-16 association as if it were a limited liability company, to the extent  
6-17 not inconsistent with this subtitle or the proper business of a  
6-18 state trust company, except that:

6-19 (1) a reference to the secretary of state means the  
6-20 banking commissioner unless the context requires otherwise; and

6-21 (2) the right of shareholders or participants to  
6-22 cumulative voting in the election of directors or managers exists  
6-23 only if granted by the state trust company's certificate of  
6-24 formation [~~articles of association~~].

6-25 (b) Unless expressly authorized by this subtitle or a rule  
6-26 of the finance commission, a state trust company may not take an  
6-27 action authorized by a law listed under Subsection (a) [~~or (d)~~]  
6-28 regarding its corporate status, capital structure, or a matter of  
6-29 corporate governance, of the type for which a law listed under  
6-30 Subsection (a) would require a filing with the secretary of state if  
6-31 the state trust company were a filing entity [~~business corporation~~  
6-32 ~~or a limited liability company~~], without submitting the filing to  
6-33 the banking commissioner for prior written approval of the action.

6-34 (c) The finance commission may adopt rules to alter or  
6-35 supplement the procedures and requirements of the laws listed by  
6-36 Subsection (a) [~~or (d)~~] applicable to an action taken under this  
6-37 chapter by a state trust company.

6-38 (d) In this subtitle, a reference to a term or phrase listed  
6-39 in a subdivision of Section 1.006, Business Organizations Code,  
6-40 includes a synonymous term or phrase referenced by the same  
6-41 subdivision in Section 1.006 of that code.

6-42 SECTION 19. The heading to Subchapter B, Chapter 182,  
6-43 Finance Code, is amended to read as follows:

6-44 SUBCHAPTER B. AMENDMENT OF CERTIFICATE [~~ARTICLES~~]; CHANGES IN  
6-45 CAPITAL AND SURPLUS

6-46 SECTION 20. The heading to Section 182.101, Finance Code,  
6-47 is amended to read as follows:

6-48 Sec. 182.101. AMENDMENT OR RESTATEMENT OF STATE TRUST  
6-49 COMPANY CERTIFICATE OF FORMATION [~~ARTICLES OF ASSOCIATION~~].

6-50 SECTION 21. Subsections (a), (b), (c), and (d), Section  
6-51 182.101, Finance Code, are amended to read as follows:

6-52 (a) A state trust company that has been granted a charter  
6-53 under Section 182.006 or a predecessor statute may amend or restate  
6-54 its certificate of formation [~~articles of association~~] for any  
6-55 lawful purpose, including the creation of authorized but unissued  
6-56 shares or participation shares in one or more classes or series.

6-57 (b) An amendment authorizing the issuance of shares or  
6-58 participation shares in series must contain:

6-59 (1) the designation of each series and a statement of  
6-60 any variations in the preferences, limitations, and relative rights  
6-61 among series to the extent that the preferences, limitations, and  
6-62 relative rights are to be established in the certificate of  
6-63 formation [~~articles of association~~]; and

6-64 (2) a statement of any authority to be vested in the  
6-65 board to establish series and determine the preferences,  
6-66 limitations, and relative rights of each series.

6-67 (c) A limited trust association may not amend its  
6-68 certificate of formation [~~articles of association~~] to extend its  
6-69 period of existence for a perpetual period or for any period of

7-1 years, unless the period of existence is expressly contingent on  
 7-2 those events resulting in dissolution of the trust association  
 7-3 under Section 183.208.

7-4 (d) Amendment or restatement of the certificate of  
 7-5 formation [~~articles of association~~] of a state trust company and  
 7-6 approval of the board and shareholders or participants must be made  
 7-7 or obtained in accordance with the Business Organizations Code [~~for~~  
 7-8 ~~the amendment or restatement of a certificate of formation by a~~  
 7-9 ~~for-profit corporation~~], except as otherwise provided by this  
 7-10 subtitle or rules adopted under this subtitle. The original and one  
 7-11 copy of the certificate [~~articles~~] of amendment or restated  
 7-12 certificate of formation [~~articles of association~~] must be filed  
 7-13 with the banking commissioner for approval. Unless the submission  
 7-14 presents novel or unusual questions, the banking commissioner shall  
 7-15 approve or reject the amendment or restatement not later than the  
 7-16 31st day after the date the banking commissioner considers the  
 7-17 submission informationally complete and accepted for filing. The  
 7-18 banking commissioner may require the submission of additional  
 7-19 information as considered necessary to an informed decision to  
 7-20 approve or reject any amendment or restatement of a certificate of  
 7-21 formation [~~articles of association~~] under this section.

7-22 SECTION 22. Subsections (a) and (b), Section 182.102,  
 7-23 Finance Code, are amended to read as follows:

7-24 (a) If the certificate of formation [~~articles of~~  
 7-25 ~~association~~] expressly gives [~~give~~] the board authority to  
 7-26 establish series and determine the preferences, limitations, and  
 7-27 relative rights of each series, the board may do so only on  
 7-28 compliance with this section and any rules adopted under this  
 7-29 chapter.

7-30 (b) A series of shares or participation shares may be  
 7-31 established in the manner provided by the Business Organizations  
 7-32 Code [~~as if a state trust company were a domestic corporation~~], but  
 7-33 the shares or participation shares of the series may not be issued  
 7-34 and sold except on compliance with Section 182.103. The state trust  
 7-35 company shall file the original and one copy of the statement of  
 7-36 action required by the Business Organizations Code with the banking  
 7-37 commissioner.

7-38 SECTION 23. Section 182.301, Finance Code, is amended to  
 7-39 read as follows:

7-40 Sec. 182.301. MERGER AUTHORITY. (a) Two or more trust  
 7-41 institutions, corporations, or other entities with the authority to  
 7-42 participate in a merger, at least one of which is a state trust  
 7-43 company, may adopt and implement a plan of merger in accordance with  
 7-44 this section. The merger may not be made without the prior written  
 7-45 approval of the banking commissioner if any surviving, new, or  
 7-46 acquiring entity that is a party to the merger or created by the  
 7-47 terms of the merger is a state trust company or is not a trust  
 7-48 institution [~~Subject to this subchapter and with the prior written~~  
 7-49 ~~approval of the banking commissioner, a state trust company may~~  
 7-50 ~~merge with another person to the same extent as a for-profit~~  
 7-51 ~~corporation under the Business Organizations Code~~].

7-52 (b) Implementation of the plan of merger by the parties and  
 7-53 approval of the board, shareholders, participants, or owners of the  
 7-54 parties must be made or obtained as provided by the Business  
 7-55 Organizations Code as if the state trust company were a filing  
 7-56 entity [~~domestic corporation~~] and all other parties to the merger  
 7-57 were foreign [~~corporations and other~~] entities, except as otherwise  
 7-58 provided by rules adopted under this chapter.

7-59 SECTION 24. Subsection (a), Section 182.302, Finance Code,  
 7-60 is amended to read as follows:

7-61 (a) To apply for approval of a merger, the parties must  
 7-62 submit the original certificate [~~articles~~] of merger, a number of  
 7-63 copies of the certificate [~~articles~~] of merger equal to the number  
 7-64 of surviving, new, and acquiring entities, and an application in  
 7-65 the form required by the banking commissioner. The banking  
 7-66 commissioner may require the submission of additional information  
 7-67 as considered necessary to an informed decision.

7-68 SECTION 25. Subsection (a), Section 182.303, Finance Code,  
 7-69 is amended to read as follows:

8-1 (a) If the banking commissioner approves the merger and  
8-2 finds that all required filing fees and investigative costs have  
8-3 been paid, the banking commissioner shall:

8-4 (1) endorse the face of the original and each copy of  
8-5 the certificate [~~articles~~] of merger with the date of approval and  
8-6 the word "Approved";

8-7 (2) file the original in the department's records; and

8-8 (3) deliver a certified copy of the certificate  
8-9 [~~articles~~] of merger to each surviving, new, or acquiring entity.

8-10 SECTION 26. Subsection (b), Section 182.501, Finance Code,  
8-11 is amended to read as follows:

8-12 (b) The merger or conversion must be made and approval of  
8-13 the state trust company's board, shareholders, or participants must  
8-14 be obtained in accordance with the Business Organizations Code as  
8-15 if the state trust company were a filing entity [~~domestic~~  
8-16 ~~corporation~~] and all other parties to the transaction, if any, were  
8-17 foreign [~~corporations or other~~] entities, except as may be  
8-18 otherwise provided by rule. For purposes of this subsection, a  
8-19 conversion is considered a merger into the successor trust  
8-20 institution.

8-21 SECTION 27. Section 183.203, Finance Code, is amended to  
8-22 read as follows:

8-23 Sec. 183.203. CONTRACTING FOR DEBT OR OBLIGATION. Except  
8-24 as provided by this section or the certificate of formation  
8-25 [~~articles of association~~] of the limited trust association, a debt,  
8-26 liability, or other obligation may be contracted for or incurred on  
8-27 behalf of a limited trust association only by:

8-28 (1) a majority of the managers, if management of the  
8-29 limited trust association has been vested in a board of managers;

8-30 (2) a majority of the managing participants; or

8-31 (3) an officer or other agent vested with actual or  
8-32 apparent authority to contract for or incur the debt, liability, or  
8-33 other obligation.

8-34 SECTION 28. Subsections (a) and (c), Section 183.204,  
8-35 Finance Code, are amended to read as follows:

8-36 (a) Management of a limited trust association is vested in  
8-37 the participants in proportion to each participant's contribution  
8-38 to capital, as adjusted periodically to properly reflect any  
8-39 additional contribution. The certificate of formation [~~articles of~~  
8-40 ~~association~~] may provide that management of a limited trust  
8-41 association is vested in a board of managers to be elected annually  
8-42 by the participants as prescribed by the bylaws or the  
8-43 participation agreement.

8-44 (c) The certificate of formation [~~articles of association~~],  
8-45 bylaws, and participation agreement of a limited trust association  
8-46 may use the term "director" instead of "manager" and the term  
8-47 "board" instead of "board of managers."

8-48 SECTION 29. Subsections (a) and (c), Section 183.205,  
8-49 Finance Code, are amended to read as follows:

8-50 (a) Except as otherwise provided by this chapter, a  
8-51 participant may not receive from a limited trust association any  
8-52 part of the participant's contribution to capital unless:

8-53 (1) all liabilities of the limited trust association,  
8-54 except liabilities to participants on account of contribution to  
8-55 capital, have been paid;

8-56 (2) after the withdrawal or reduction, sufficient  
8-57 property of the limited trust association will remain to pay all  
8-58 liabilities of the limited trust association, except liabilities to  
8-59 participants on account of contribution to capital;

8-60 (3) all participants consent; or

8-61 (4) the certificate of formation is [~~articles of~~  
8-62 ~~association are~~] canceled or amended to set out the withdrawal or  
8-63 reduction.

8-64 (c) A participant may demand the return of the participant's  
8-65 contribution to capital only in cash unless a different form of  
8-66 return of the contribution is allowed by the certificate of  
8-67 formation [~~articles of association~~] or by the unanimous consent of  
8-68 all participants.

8-69 SECTION 30. Subsection (a), Section 183.207, Finance Code,



9-1 is amended to read as follows:

9-2 (a) A limited trust association in which management is  
9-3 retained by the participants is not required to adopt bylaws if the  
9-4 provisions required by law to be contained in the bylaws are  
9-5 contained in the certificate of formation [~~articles of association~~]  
9-6 or the participation agreement.

9-7 SECTION 31. Subsection (a), Section 183.208, Finance Code,  
9-8 is amended to read as follows:

9-9 (a) A limited trust association organized under this  
9-10 chapter is dissolved on:

9-11 (1) the expiration of the period fixed for the  
9-12 duration of the limited trust association;

9-13 (2) a vote to dissolve or the execution of a written  
9-14 consent to dissolve by all full liability participants, if any, and  
9-15 a sufficient number of other participants that, combined with all  
9-16 full liability participants, hold at least two-thirds of the  
9-17 participation shares in each class in the association, or a greater  
9-18 fraction as provided by the certificate of formation [~~articles of~~  
9-19 ~~association~~];

9-20 (3) except as provided by the certificate of formation  
9-21 [~~articles of association~~], the death, insanity, expulsion,  
9-22 bankruptcy, retirement, or resignation of a participant unless a  
9-23 majority in interest of all remaining participants elect in writing  
9-24 not later than the 90th day after the date of the event to continue  
9-25 the business of the association; or

9-26 (4) the occurrence of an event of dissolution  
9-27 specified in the certificate of formation [~~articles of~~  
9-28 ~~association~~].

9-29 SECTION 32. Section 183.209, Finance Code, is amended to  
9-30 read as follows:

9-31 Sec. 183.209. ALLOCATION OF PROFITS AND LOSSES. The  
9-32 profits and losses of a limited trust association may be allocated  
9-33 among the participants and among classes of participants as  
9-34 provided by the participation agreement. Without the prior written  
9-35 approval of the banking commissioner to use a different allocation  
9-36 method, the profits and losses must be allocated according to the  
9-37 relative interests of the participants as reflected in the  
9-38 certificate of formation [~~articles of association~~] and related  
9-39 documents filed with and approved by the banking commissioner.

9-40 SECTION 33. Section 183.210, Finance Code, is amended to  
9-41 read as follows:

9-42 Sec. 183.210. DISTRIBUTIONS. Subject to Section 182.103,  
9-43 distributions of cash or other assets of a limited trust  
9-44 association may be made to the participants as provided by the  
9-45 participation agreement. Without the prior written approval of the  
9-46 banking commissioner to use a different distribution method,  
9-47 distributions must be made to the participants according to the  
9-48 relative interests of the participants as reflected in the  
9-49 certificate of formation [~~articles of association~~] and related  
9-50 documents filed with and approved by the banking commissioner.

9-51 SECTION 34. Subsection (a), Section 186.312, Finance Code,  
9-52 is amended to read as follows:

9-53 (a) The priority of distribution of assets from the estate  
9-54 of a state trust company the trust deposits of which are not insured  
9-55 by the Federal Deposit Insurance Corporation or its successor shall  
9-56 be in accordance with the order of each class as provided by this  
9-57 section. Every claim in each class shall be paid in full, or  
9-58 adequate money shall be retained for that payment, before a member  
9-59 of the next class may receive any payment. A subclass may not be  
9-60 established within a class, except for a preference or  
9-61 subordination within a class expressly created by contract or other  
9-62 instrument or in the certificate of formation [~~articles of~~  
9-63 ~~association~~].

9-64 SECTION 35. Subsection (c), Section 186.313, Finance Code,  
9-65 is amended to read as follows:

9-66 (c) At the meeting, the shareholders or participants shall  
9-67 appoint one or more agents to take over the affairs to continue the  
9-68 liquidation for the benefit of the shareholders or participants and  
9-69 participant-transferees. Voting privileges are governed by the

10-1 state trust company's bylaws and certificate of formation [~~articles~~  
10-2 ~~of association~~]. If a quorum cannot be obtained at the meeting, the  
10-3 banking commissioner shall appoint an agent. An agent appointed  
10-4 under this subsection shall execute and file with the court a bond  
10-5 approved by the court, conditioned on the faithful performance of  
10-6 all the duties of the trust.

10-7 SECTION 36. Subsection (a), Section 204.101, Finance Code,  
10-8 is amended to read as follows:

10-9 (a) A foreign bank that desires to establish and maintain a  
10-10 Texas state branch or agency shall submit an application to the  
10-11 commissioner. The application must:

10-12 (1) be accompanied by all application fees and  
10-13 deposits required by applicable rules;

10-14 (2) be in the form specified by the commissioner;

10-15 (3) be subscribed and acknowledged by an officer of  
10-16 the foreign bank;

10-17 (4) have attached:

10-18 (A) a complete copy of the foreign bank's  
10-19 application to the Board of Governors of the Federal Reserve System  
10-20 under Section 7(d), International Banking Act (12 U.S.C. Section  
10-21 3105(d));

10-22 (B) an authenticated copy of the foreign bank's  
10-23 certificate of formation [~~articles of incorporation~~] and bylaws or  
10-24 other constitutive documents and, if the copy is in a language other  
10-25 than English, an English translation of the document, under the  
10-26 oath of the translator; and

10-27 (C) evidence of compliance with Section 201.102;

10-28 (5) be submitted when the federal application is  
10-29 submitted to the board of governors; and

10-30 (6) include on its face or in accompanying documents:

10-31 (A) the name of the foreign bank;

10-32 (B) the street address where the principal office  
10-33 of the Texas state branch or agency is to be located and, if  
10-34 different, the Texas state branch or agency's mailing address;

10-35 (C) the name and qualifications of each officer  
10-36 and director of the foreign bank who will have control of all or  
10-37 part of the business and affairs of the Texas state branch or  
10-38 agency;

10-39 (D) a detailed statement of the foreign bank's  
10-40 financial condition as of a date not more than 360 days before the  
10-41 date of the application; and

10-42 (E) other information that:

10-43 (i) is necessary to enable the commissioner  
10-44 to make the findings listed in Section 204.103;

10-45 (ii) is required by rules adopted under  
10-46 this subtitle; or

10-47 (iii) the commissioner reasonably  
10-48 requests.

10-49 SECTION 37. Section 204.107, Finance Code, is amended to  
10-50 read as follows:

10-51 Sec. 204.107. FILING OF AMENDMENTS TO CERTIFICATE OF  
10-52 FORMATION [~~ARTICLES OF INCORPORATION~~]. If the certificate of  
10-53 formation [~~articles of incorporation~~] of a foreign bank licensed to  
10-54 maintain a Texas state branch or agency is [~~are~~] amended, the  
10-55 foreign bank shall promptly file with the commissioner a copy of the  
10-56 amendment, duly authenticated by the proper officer of the country  
10-57 of the foreign bank's organization. The filing does not enlarge or  
10-58 alter the business the foreign bank is authorized to pursue in this  
10-59 state, authorize the foreign bank to transact business in this  
10-60 state under a name other than the name set forth in its license, or  
10-61 extend the duration of its corporate existence.

10-62 SECTION 38. Subsection (a), Section 204.201, Finance Code,  
10-63 is amended to read as follows:

10-64 (a) A foreign bank may establish a Texas representative  
10-65 office if the foreign bank files with the commissioner a verified  
10-66 statement of registration. A statement of registration must:

10-67 (1) be accompanied by all registration fees and  
10-68 deposits required by rule;

10-69 (2) be in the form specified by the commissioner;

11-1 (3) be subscribed and acknowledged by an officer of  
11-2 the foreign bank;

11-3 (4) contain as an exhibit or attachment:

11-4 (A) a copy of the foreign bank's notice or  
11-5 application submitted to the Board of Governors of the Federal  
11-6 Reserve System under Section 10, International Banking Act (12  
11-7 U.S.C. Section 3107), and, when issued, the order or notification  
11-8 from the board of governors indicating that the representative  
11-9 office has been approved;

11-10 (B) an authenticated copy of the foreign bank's  
11-11 certificate of formation [~~articles of incorporation~~] and bylaws or  
11-12 other constitutive documents and, if the copy is in a language other  
11-13 than English, an English translation of the document, under the  
11-14 oath of the translator; and

11-15 (C) evidence of compliance with Section 201.102;

11-16 (5) be submitted when the federal notice or  
11-17 application is submitted to the board of governors; and

11-18 (6) directly or in exhibits or attachments contain:

11-19 (A) the name of the foreign bank;

11-20 (B) the street address and post office address  
11-21 where each Texas representative office is to be located in this  
11-22 state;

11-23 (C) the name and qualifications of each officer  
11-24 and director of the foreign bank who will have charge of any aspect  
11-25 of the business and affairs of the Texas representative office;

11-26 (D) a complete and detailed statement of the  
11-27 financial condition of the foreign bank as of a date not more than  
11-28 360 days before the date of the filing; and

11-29 (E) other information the commissioner requires.

11-30 SECTION 39. This Act takes effect immediately if it  
11-31 receives a vote of two-thirds of all the members elected to each  
11-32 house, as provided by Section 39, Article III, Texas Constitution.  
11-33 If this Act does not receive the vote necessary for immediate  
11-34 effect, this Act takes effect September 1, 2013.

11-35 \* \* \* \* \*