

By: Burrows

H.B. No. 3367

Substitute the following for H.B. No. 3367:

By: Stephenson

C.S.H.B. No. 3367

A BILL TO BE ENTITLED

1 AN ACT
2 relating to savings and loan associations, savings banks,
3 residential mortgage loan originators and servicers, and other
4 persons or entities under the regulatory jurisdiction of the
5 Department of Savings and Mortgage Lending and the savings and
6 mortgage lending commissioner; creating an offense; imposing an
7 administrative penalty.

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

9 SECTION 1. Sections 62.001(a), (b), and (d), Finance Code,
10 are amended to read as follows:

11 (a) Five or more residents of this state may apply to form
12 and incorporate an association by submitting to the commissioner an
13 application and the filing fee.

14 (b) An application must contain:

15 (1) two copies of the association's certificate of
16 formation [~~articles of incorporation~~] identifying:

17 (A) the name of the association;
18 (B) the location of the principal office; and
19 (C) the names and addresses of the initial
20 directors;

21 (2) two copies of the association's bylaws;

22 (3) data sufficiently detailed and comprehensive to
23 enable the commissioner to make a determination under Section
24 62.007, including statements, exhibits, and maps;

1 (4) other information relating to the association and
2 its operation that the finance commission by rule requires; and

3 (5) financial information about each applicant,
4 incorporator, director, or shareholder that the finance commission
5 by rule requires.

6 (d) The certificate of formation [~~articles of~~
7 ~~incorporation~~] and statements of fact shall be signed and sworn to.

8 SECTION 2. Section 62.002(a), Finance Code, is amended to
9 read as follows:

10 (a) A capital stock association's certificate of formation
11 [~~articles of incorporation~~] must include a statement of:

12 (1) the aggregate number of shares of common stock
13 that the association may issue;

14 (2) the par value of each share or that the shares are
15 without par value;

16 (3) whether the association may issue preferred stock;

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

19 (5) the name and address of each subscriber and the
20 amount subscribed by each; and

21 (6) the amount of paid-in surplus with which the
22 association will begin business.

23 SECTION 3. Section 62.003, Finance Code, is amended to read
24 as follows:

25 Sec. 62.003. ADDITIONAL INCORPORATION REQUIREMENTS FOR
26 MUTUAL ASSOCIATION. (a) A mutual association's certificate of
27 formation [~~articles of incorporation~~] must include a statement of

1 the amount of savings liability of the association and the amount of
2 the expense fund with which the association will begin business.

3 (b) Before approving the certificate of formation
4 [~~articles of incorporation~~] of a mutual association, the
5 commissioner may require the association to have subscriptions for
6 an aggregate amount of savings accounts and an expense fund in an
7 aggregate amount that the commissioner, under rules of the finance
8 commission, finds is necessary for the successful operation of the
9 association.

10 SECTION 4. Sections 62.007(a) and (b), Finance Code, are
11 amended to read as follows:

12 (a) The commissioner may approve an application to
13 incorporate only if the commissioner finds that:

14 (1) the prerequisites to incorporation required by
15 this chapter are satisfied;

16 (2) the character, responsibility, and general
17 fitness of each person named in the certificate of formation
18 [~~articles of incorporation~~] command confidence and warrant belief
19 that:

20 (A) the business of the association will be
21 honestly and efficiently conducted in accordance with the intent
22 and purpose of this subtitle; and

23 (B) the association will have qualified
24 full-time management;

25 (3) there is a public need for the association;

26 (4) the volume of business in the community in which
27 the association will conduct its business indicates a profitable

1 operation is probable; and

2 (5) the operation of the association will not unduly
3 harm an existing association.

4 (b) On finding that the requirements of Subsection (a) are
5 fulfilled, the commissioner shall:

6 (1) enter an order approving the application and
7 stating the findings required by Subsection (a);

8 (2) issue under official seal a certificate of
9 incorporation;

10 (3) deliver a copy of the approved certificate of
11 formation [~~articles of incorporation~~] and bylaws to the
12 incorporators; and

13 (4) permanently retain a copy of the certificate of
14 formation [~~articles~~] and bylaws.

15 SECTION 5. The heading to Section 62.010, Finance Code, is
16 amended to read as follows:

17 Sec. 62.010. AMENDMENT OF CERTIFICATE OF FORMATION
18 [~~ARTICLES OF INCORPORATION~~] OR BYLAWS.

19 SECTION 6. Section 62.010(a), Finance Code, is amended to
20 read as follows:

21 (a) An association may amend its certificate of formation
22 [~~articles of incorporation~~] or bylaws by a resolution adopted by a
23 majority vote of those entitled to vote attending an annual meeting
24 or a special meeting called for that purpose.

25 SECTION 7. Section 62.011(a), Finance Code, is amended to
26 read as follows:

27 (a) Only with the prior approval of the commissioner may an

1 association:

2 (1) establish an office other than the principal
3 office stated in the association's certificate of formation
4 [~~articles of incorporation~~];

5 (2) move an office from its immediate vicinity; or

6 (3) change the association's name.

7 SECTION 8. Section 62.051, Finance Code, is amended to read
8 as follows:

9 Sec. 62.051. PURPOSE OF INCORPORATION. A person may apply
10 to form and incorporate an association for the purpose of:

11 (1) purchasing the assets, assuming the liabilities,
12 excluding liability to stockholders, and continuing the business of
13 an association the commissioner considers to be in an unsafe
14 condition; or

15 (2) acquiring an existing association by merger.

16 SECTION 9. Sections 62.053(a) and (e), Finance Code, are
17 amended to read as follows:

18 (a) The commissioner shall approve an application under
19 this subchapter if the commissioner finds that:

20 (1) the business of the association that is to be
21 reorganized or merged can be effectively continued under the
22 certificate of formation [~~articles of incorporation~~]; and

23 (2) the reorganization or merger is in the best
24 interest of the general public and the savers, depositors,
25 creditors, and shareholders of the association that is to be
26 reorganized or merged.

27 (e) In a merger, a shareholder of a capital stock

1 association has the same dissenter's rights as a shareholder of a
2 domestic business corporation under the Business Organizations
3 Code [~~Texas Business Corporation Act~~].

4 SECTION 10. Section 62.156(c), Finance Code, is amended to
5 read as follows:

6 (c) An association may retire or redeem preferred stock in
7 the manner provided by:

8 (1) the certificate of formation [~~articles of~~
9 ~~incorporation~~]; or

10 (2) a resolution of the board establishing the rights
11 and preferences relating to the stock.

12 SECTION 11. Sections 62.157(a) and (c), Finance Code, are
13 amended to read as follows:

14 (a) The certificate of formation [~~articles of~~
15 ~~incorporation~~] may:

16 (1) authorize that shares of preferred stock be
17 divided into and issued in series; and

18 (2) determine the rights and preferences of each
19 series or part of a series.

20 (c) The certificate of formation [~~articles of~~
21 ~~incorporation~~] may authorize the board by resolution to divide
22 classes of preferred stock into series and to determine the rights
23 and preferences of the shares of each series. A copy of the
24 resolution must be submitted to the commissioner before the shares
25 may be issued. The commissioner shall file the resolution in the
26 commissioner's office if the resolution conforms to this subtitle.
27 After the resolution is filed, it is considered an amendment of the

1 association's certificate of formation [~~articles of~~
2 ~~incorporation~~].

3 SECTION 12. Sections 62.252(b) and (c), Finance Code, are
4 amended to read as follows:

5 (b) The directors, or the managing officer, shall execute
6 [~~two copies of~~] the application required by Section 62.251.

7 (c) Each director, or the managing officer, [~~of the~~
8 ~~association~~] shall sign and acknowledge the application [~~as a~~
9 ~~subscriber~~] and the proposed bylaws [~~as an incorporator~~].

10 SECTION 13. Section 62.351(c), Finance Code, is amended to
11 read as follows:

12 (c) A shareholder of a capital stock association has the
13 same dissenter's rights as a shareholder of a domestic corporation
14 under the Business Organizations Code [~~Texas Business Corporation~~
15 ~~Act~~].

16 SECTION 14. Section 62.405(c), Finance Code, is amended to
17 read as follows:

18 (c) A surviving association that is a domestic association
19 shall operate under:

20 (1) the certificate of formation [~~articles~~] and bylaws
21 of the merging or consolidating domestic association; and

22 (2) the laws applicable to a domestic association.

23 SECTION 15. Section 62.454(b), Finance Code, is amended to
24 read as follows:

25 (b) After the merger takes effect:

26 (1) a corporation that was merged ceases to exist;

27 (2) the association assumes the rights and obligations

1 of the corporation and owns the property of the association; and

2 (3) the association's certificate of formation is
3 ~~[articles of incorporation are]~~ considered amended to the extent
4 that a change is stated in the plan of merger.

5 SECTION 16. Section 66.002, Finance Code, is amended to
6 read as follows:

7 Sec. 66.002. ADOPTION OF RULES. The finance commission may
8 adopt rules relating to:

9 (1) the minimum amounts of capital stock and paid-in
10 surplus required for incorporation as a capital stock association;

11 (2) the minimum amounts of savings liability and
12 expense funds required for incorporation as a mutual association;

13 (3) the fees and procedures for processing, hearing,
14 and deciding applications filed with the commissioner or the
15 Department of Savings and Mortgage Lending under this subtitle;

16 (4) the books and records that an association is
17 required to keep and the location at which the books and records are
18 required to be maintained;

19 (5) the accounting principles and practices that an
20 association is required to observe;

21 (6) the conditions under which records may be copied
22 or reproduced for permanent storage before the original records are
23 destroyed;

24 (7) ~~[the form, contents, and time of publication of~~
25 ~~statements of condition,~~

26 ~~[(8)]~~ the form and contents of annual reports and
27 other reports that an association is required to prepare and

1 publish or file;

2 (8) [~~(9)~~] the manner in which assets, liabilities, and
3 transactions in general are to be described when entered in the
4 books of an association, so that the entry accurately describes the
5 subject matter of the entry; and

6 (9) [~~(10)~~] the conditions under which the
7 commissioner may require an asset to be charged off or reserves
8 established by transfer from surplus or paid-in capital because of
9 the depreciation of or overstated value of the asset.

10 SECTION 17. Section 66.101, Finance Code, is amended to
11 read as follows:

12 Sec. 66.101. INTERVENTION FOR VIOLATIONS AND UNSAFE AND
13 UNSOUND PRACTICES. The commissioner may intervene in the affairs
14 of an association if the association or a person who participates in
15 the affairs of the association or a subsidiary of the association:

16 (1) engages in or is about to engage in an unsafe and
17 unsound practice in conducting the affairs of the association; or

18 (2) violates or is about to violate:

19 (A) the certificate of formation [~~articles of~~
20 ~~incorporation~~] or bylaws of the association;

21 (B) a law or supervisory order applicable to the
22 association; or

23 (C) a condition that the commissioner or the
24 finance commission has imposed on the association by written order
25 or agreement.

26 SECTION 18. Section 67.001(b), Finance Code, is amended to
27 read as follows:

1 (b) Subsection (a) does not prohibit activity that is not
2 considered to be transacting business in this state under Section
3 9.251, Business Organizations Code [~~Section B, Article 8.01, Texas~~
4 ~~Business Corporation Act~~].

5 SECTION 19. Sections 92.051(a), (b), and (d), Finance Code,
6 are amended to read as follows:

7 (a) Five or more adult residents of this state may apply to
8 form and incorporate a savings bank by submitting to the
9 commissioner:

10 (1) an application to incorporate a savings bank that
11 is:

12 (A) in a form specified by the commissioner; and

13 (B) signed by each incorporator; and

14 (2) the filing fee.

15 (b) An application must contain:

16 (1) two copies of the savings bank's certificate of
17 formation [~~articles of incorporation~~] identifying:

18 (A) the name of the savings bank;

19 (B) the location of the principal office; and

20 (C) the names and addresses of the initial
21 directors;

22 (2) two copies of the savings bank's bylaws;

23 (3) data sufficiently detailed and comprehensive to
24 enable the commissioner to make findings under Section 92.058,
25 including statements, exhibits, and maps;

26 (4) other information relating to the savings bank and
27 its operation that the finance commission by rule requires; and

1 (5) financial information about each applicant,
2 incorporator, director, officer, or shareholder that the finance
3 commission by rule requires.

4 (d) The certificate of formation [~~articles of~~
5 ~~incorporation~~] and statements of fact must be signed and sworn to.

6 SECTION 20. Section 92.052(a), Finance Code, is amended to
7 read as follows:

8 (a) A capital stock savings bank's certificate of formation
9 [~~articles of incorporation~~] must include a statement of:

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

12 (2) the par value of each share or that the shares are
13 without par value;

14 (3) whether the savings bank may issue preferred
15 stock;

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

18 (5) the name and address of each subscriber and the
19 amount subscribed by each; and

20 (6) the amount of paid-in surplus with which the
21 savings bank will begin business.

22 SECTION 21. Section 92.053, Finance Code, is amended to
23 read as follows:

24 Sec. 92.053. ADDITIONAL REQUIREMENTS FOR MUTUAL SAVINGS
25 BANK. (a) A mutual savings bank's certificate of formation

26 [~~articles of incorporation~~] must include a statement of the amount
27 of deposit liability of the savings bank and the amount of the

1 expense fund with which the savings bank will begin business.

2 (b) Before approving the certificate of formation [~~articles~~
3 ~~of incorporation~~] of a mutual savings bank, the commissioner shall
4 require the savings bank to have subscriptions for an aggregate
5 amount of deposit accounts and an expense fund in an aggregate
6 amount the finance commission by rule establishes as necessary for
7 the successful operation of a mutual savings bank.

8 SECTION 22. Sections 92.058(b) and (c), Finance Code, are
9 amended to read as follows:

10 (b) The commissioner may approve an application to
11 incorporate only if:

12 (1) the prerequisites to incorporation required by
13 this chapter are satisfied;

14 (2) the character, responsibility, and general
15 fitness of each person named in the certificate of formation
16 [~~articles of incorporation~~] command confidence and warrant belief
17 that:

18 (A) the business of the savings bank will be
19 honestly and efficiently conducted in accordance with the intent
20 and purpose of this subtitle; and

21 (B) the savings bank will have qualified
22 full-time management;

23 (3) there is a public need for the savings bank;

24 (4) the volume of business in the community in which
25 the savings bank will conduct its business indicates a profitable
26 operation is probable; and

27 (5) the operation of the savings bank will not unduly

1 harm an existing savings bank or state or federal savings and loan
2 association.

3 (c) On finding that each requirement of Subsection (b) is
4 met, the commissioner shall:

5 (1) enter an order approving the application and
6 stating the findings required by Subsection (b);

7 (2) issue under official seal a certificate of
8 incorporation;

9 (3) deliver a copy of the approved certificate of
10 formation [~~articles of incorporation~~] and bylaws to the
11 incorporators; and

12 (4) permanently retain a copy of the certificate of
13 formation [~~articles of incorporation~~] and bylaws.

14 SECTION 23. The heading to Section 92.062, Finance Code, is
15 amended to read as follows:

16 Sec. 92.062. AMENDMENT OF CERTIFICATE OF FORMATION
17 [~~ARTICLES OF INCORPORATION~~] OR BYLAWS.

18 SECTION 24. Section 92.062(a), Finance Code, is amended to
19 read as follows:

20 (a) A savings bank may amend its certificate of formation
21 [~~articles of incorporation~~] or bylaws by a resolution adopted by a
22 majority vote of those entitled to vote attending an annual meeting
23 or a special meeting called for that purpose.

24 SECTION 25. Section 92.063(a), Finance Code, is amended to
25 read as follows:

26 (a) Only with the prior approval of the commissioner given
27 in accordance with rules of the finance commission may a savings

1 bank:

2 (1) establish an office other than the principal
3 office stated in the savings bank's certificate of formation
4 [~~articles of incorporation~~];

5 (2) move an office from its immediate vicinity; or

6 (3) change the savings bank's name.

7 SECTION 26. Section 92.101, Finance Code, is amended to
8 read as follows:

9 Sec. 92.101. PURPOSE OF INCORPORATION. A person may apply
10 to form and incorporate a savings bank for the purpose of:

11 (1) purchasing the assets, assuming the liabilities
12 other than liability to shareholders, and continuing the business
13 of a financial institution the commissioner considers to be in an
14 unsafe condition;

15 (2) acquiring an existing financial institution by
16 merger; or

17 (3) facilitating a reorganization or merger with or
18 into a savings bank under rules adopted by the finance commission.

19 SECTION 27. Sections 92.103(a) and (e), Finance Code, are
20 amended to read as follows:

21 (a) The commissioner shall approve an application under
22 this subchapter if the commissioner finds that:

23 (1) the business of the financial institution that is
24 to be reorganized or merged can be effectively continued under the
25 certificate of formation [~~articles of incorporation~~]; and

26 (2) the reorganization or merger is in the best
27 interest of the public and the savers, depositors, creditors, and

1 shareholders of the financial institution that is to be reorganized
2 or merged.

3 (e) In a merger, a shareholder of a capital stock financial
4 institution has the same dissenter's rights as a shareholder of a
5 domestic business corporation under the Business Organizations
6 Code [~~Texas Business Corporation Act~~].

7 SECTION 28. Section 92.152(b), Finance Code, is amended to
8 read as follows:

9 (b) The members or shareholders shall elect the board by a
10 majority vote at the annual meeting. The directors may be elected
11 for staggered terms of longer than one year as provided by the
12 savings bank's bylaws or certificate of formation [~~articles of~~
13 ~~incorporation~~].

14 SECTION 29. Section 92.158(a), Finance Code, is amended to
15 read as follows:

16 (a) The voting rights of a person entitled to vote at an
17 annual or special meeting of a savings bank are the same as those of
18 a shareholder of a domestic business corporation under the Business
19 Organizations Code [~~Texas Business Corporation Act~~].

20 SECTION 30. Section 92.209(c), Finance Code, is amended to
21 read as follows:

22 (c) A savings bank may retire or redeem preferred stock in
23 the manner provided by:

24 (1) the certificate of formation [~~articles of~~
25 ~~incorporation~~]; or

26 (2) a resolution of the board of the savings bank
27 establishing the rights and preferences relating to the stock.

1 SECTION 31. Sections 92.210(a) and (c), Finance Code, are
2 amended to read as follows:

3 (a) The certificate of formation [~~articles of~~
4 ~~incorporation~~] may:

5 (1) authorize that shares of preferred stock be
6 divided into and issued in series; and

7 (2) determine the rights and preferences of each
8 series or part of a series.

9 (c) The certificate of formation [~~articles of~~
10 ~~incorporation~~] may authorize the board by resolution to divide
11 classes of preferred stock into series and to determine the rights
12 and preferences of the shares of each series. A copy of the
13 resolution must be submitted to the commissioner before the shares
14 may be issued. The commissioner shall file the resolution in the
15 commissioner's office if the resolution conforms to this subtitle.
16 After the resolution is filed, it is considered an amendment of the
17 savings bank's certificate of formation [~~articles of~~
18 ~~incorporation~~].

19 SECTION 32. Sections 92.302(b) and (c), Finance Code, are
20 amended to read as follows:

21 (b) The directors, or the managing officer [~~president and~~
22 ~~secretary~~], shall execute the [~~two copies of an~~] application
23 required by Section 92.301 [~~for certificate of incorporation as~~
24 ~~provided by Subchapter B~~].

25 (c) Each director, or the managing officer [~~president and~~
26 ~~secretary~~], shall sign and acknowledge the application [~~for~~
27 ~~certificate of incorporation as a subscriber~~] and [~~shall sign and~~

1 ~~acknowledge~~] the proposed bylaws [~~as an incorporator~~].

2 SECTION 33. Section 92.351(c), Finance Code, is amended to
3 read as follows:

4 (c) A shareholder of a capital stock savings bank has the
5 same dissenter's rights as a shareholder of a domestic corporation
6 under the Business Organizations Code [~~Texas Business Corporation~~
7 ~~Act~~].

8 SECTION 34. Section 92.405(c), Finance Code, is amended to
9 read as follows:

10 (c) A surviving savings bank that is a domestic savings bank
11 shall operate under:

12 (1) the certificate of formation [~~articles~~] and bylaws
13 of the merging or consolidating domestic savings bank; and

14 (2) the law applicable to a domestic savings bank.

15 SECTION 35. Section 92.454(b), Finance Code, is amended to
16 read as follows:

17 (b) After the merger takes effect:

18 (1) a corporation that was merged ceases to exist;

19 (2) the savings bank assumes the rights and
20 obligations of the corporation and owns the property of the
21 corporation; and

22 (3) the savings bank's certificate of formation is
23 [~~articles of incorporation are~~] considered amended to the extent
24 that a change is stated in the plan of merger.

25 SECTION 36. Section 94.301, Finance Code, is amended to
26 read as follows:

27 Sec. 94.301. AUTHORIZATION. With the prior approval

1 ~~[consent]~~ of the commissioner and subject to rules adopted by the
2 finance commission, a savings bank may invest in a subsidiary
3 corporation created under general corporation law.

4 SECTION 37. Section 96.002(a), Finance Code, is amended to
5 read as follows:

6 (a) The finance commission may adopt rules necessary to
7 supervise and regulate savings banks and to protect public
8 investment in savings banks, including rules relating to:

9 (1) the minimum amounts of capital required to
10 incorporate and operate as a savings bank, which may not be less
11 than the amounts required of corresponding national banks;

12 (2) the fees and procedures for processing, hearing,
13 and deciding applications filed with the commissioner or the
14 Department of Savings and Mortgage Lending under this subtitle;

15 (3) the books and records that a savings bank is
16 required to keep and the location at which the books and records are
17 required to be maintained;

18 (4) the accounting principles and practices that a
19 savings bank is required to observe;

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

23 (6) ~~[the form, content, and time of publication of~~
24 ~~statements of condition,~~

25 ~~[(7)]~~ the form and content of any report that a savings
26 bank is required to prepare and publish or file under this chapter;

27 (7) ~~[(8)]~~ the manner in which assets, liabilities, and

1 transactions in general are to be described when entered in the
2 books of a savings bank, so that the entry accurately describes the
3 subject matter of the entry;

4 (8) [~~(9)~~] the conditions under which the commissioner
5 may require an asset to be charged off or reserves established by
6 transfer from surplus or paid-in capital because of depreciation of
7 or overstated value of the asset;

8 (9) [~~(10)~~] the change of control of a savings bank;

9 (10) [~~(11)~~] the conduct, management, and operation of
10 a savings bank;

11 (11) [~~(12)~~] the withdrawable accounts, bonuses,
12 plans, and contracts for savings programs;

13 (12) [~~(13)~~] the merger, consolidation,
14 reorganization, conversion, and liquidation of a savings bank;

15 (13) [~~(14)~~] the establishment of an additional office
16 or the change of office location or name of a savings bank;

17 (14) [~~(15)~~] the requirements for a savings bank's
18 holding companies, including those relating to:

19 (A) registration and periodic reporting of a
20 holding company with the commissioner; and

21 (B) transactions between a holding company, an
22 affiliate of a holding company, or a savings bank; and

23 (15) [~~(16)~~] the powers of a savings bank to make loans
24 and investments that contain provisions reasonably necessary to
25 ensure that a loan made by a savings bank is consistent with sound
26 lending practices and that the savings bank's investment will
27 promote the purposes of this subtitle, including provisions

1 governing:

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

4 (B) the conditions under which a savings bank may
5 purchase or participate in a loan made by another lender;

6 (C) the conditions for the servicing of a loan
7 for another lender;

8 (D) the conditions under which a savings bank may
9 lend money on the security of a loan made by another person;

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

13 (F) the conditions under which a savings bank may
14 invest in securities and debt instruments;

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

18 (H) the form and content of statements of
19 expenses and fees and other charges that are paid by a borrower or
20 that a borrower is obligated to pay;

21 (I) the title information that must be
22 maintained;

23 (J) the borrower's insurance coverage of
24 property securing a loan;

25 (K) an appraisal report;

26 (L) the financial statement of a borrower;

27 (M) the fees or other compensation that may be

1 paid to a person in connection with obtaining a loan for a savings
2 bank, including an officer, director, employee, affiliated person,
3 consultant, or third party;

4 (N) the conditions under which the savings bank
5 may advance money to pay a tax, assessment, insurance premium, or
6 other similar charge for the protection of the savings bank's
7 interest in property securing the savings bank's loans;

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

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

12 (Q) the terms governing the investment by a
13 savings bank in a subsidiary, the powers that may be exercised by a
14 subsidiary, and the activities that may be engaged in by a
15 subsidiary; and

16 (R) any other matter considered necessary to
17 administer each type of transaction.

18 SECTION 38. Section 96.101(a), Finance Code, is amended to
19 read as follows:

20 (a) The commissioner may intervene in the affairs of a
21 savings bank if the savings bank or a person who participates in the
22 affairs of the savings bank or a subsidiary or holding company of
23 the savings bank:

24 (1) engages in or is about to engage in an unsafe and
25 unsound practice in conducting the affairs of the savings bank; or

26 (2) violates or is about to violate:

27 (A) the certificate of formation [~~articles of~~

1 ~~incorporation~~] or bylaws of the savings bank;

2 (B) a law or supervisory order applicable to the
3 savings bank; or

4 (C) a condition that the commissioner or the
5 finance commission has imposed on the savings bank by written
6 order, directive, or agreement.

7 SECTION 39. Section 97.052, Finance Code, is amended to
8 read as follows:

9 Sec. 97.052. APPLICATION FOR APPROVAL OF REORGANIZATION.

10 The application for approval of reorganization must contain:

11 (1) a brief statement summarizing a reorganization
12 plan;

13 (2) two copies of the proposed certificate of
14 formation [~~articles of incorporation~~] of the subsidiary savings
15 bank acknowledged by the incorporators of the subsidiary savings
16 bank;

17 (3) two copies of the proposed bylaws of the savings
18 bank;

19 (4) a statement that the plan of reorganization was
20 advised, authorized, and approved by the savings bank in the manner
21 and by the vote required by its charter and the laws of this state;
22 and

23 (5) a statement of the manner of approval.

24 SECTION 40. Section 98.001(b), Finance Code, is amended to
25 read as follows:

26 (b) Subsection (a) does not prohibit activity that is not
27 considered to be transacting business in this state under Section

1 9.251, Business Organizations Code [~~Section B, Article 8.01, Texas~~
2 ~~Business Corporation Act~~].

3 SECTION 41. Section 119.101(c), Finance Code, is amended to
4 read as follows:

5 (c) A stockholder of a capital stock savings bank has the
6 same right to examine the relevant books and records of a savings
7 bank as a shareholder of a business corporation under the Business
8 Organizations Code [~~Texas Business Corporation Act~~].

9 SECTION 42. Section 156.004(a), Finance Code, is amended to
10 read as follows:

11 (a) At the time a residential mortgage loan [~~an~~] applicant
12 submits an application to a residential mortgage loan originator
13 sponsored by and conducting business for a licensed or registered
14 residential mortgage loan company under this chapter, the
15 residential mortgage loan originator shall provide to the applicant
16 a disclosure form. The form must [~~that specifies~~]:

17 (1) include the name, address, and toll-free telephone
18 number for the department [~~the nature of the relationship between~~
19 ~~the applicant and the residential mortgage loan originator~~]; and

20 (2) contain information on how to file a complaint or
21 recovery fund claim [~~the duties the residential mortgage loan~~
22 ~~originator has to the applicant, and~~

23 [~~(3) how the residential mortgage loan originator will~~
24 ~~be compensated~~].

25 SECTION 43. Section 157.0021(b), Finance Code, is amended
26 to read as follows:

27 (b) A mortgage banker that indicates in its registration

1 that it acts as a residential mortgage loan servicer shall provide
2 to the borrower of each residential mortgage loan that it services
3 and that is secured by a lien on residential real estate located in
4 this state the following notice not later than the 30th day after
5 the date the mortgage banker commences servicing the loan:

6 "COMPLAINTS REGARDING THE SERVICING OF YOUR TEXAS MORTGAGE
7 SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING,
8 _____ (street address of the Department
9 of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS
10 AVAILABLE AT _____ (telephone number of the Department of
11 Savings and Mortgage Lending's toll-free consumer hotline)."

12 SECTION 44. The heading to Subchapter C, Chapter 158,
13 Finance Code, is amended to read as follows:

14 SUBCHAPTER C. INVESTIGATIONS; ~~i~~ COMPLAINTS ~~[r]~~ AND ACTIONS
15 AGAINST REGISTRANT

16 SECTION 45. Section 158.101, Finance Code, is amended to
17 read as follows:

18 Sec. 158.101. DISCLOSURE STATEMENT. A registrant shall
19 provide to the borrower of each residential mortgage loan that it
20 services and that is secured by a lien on residential real estate
21 located in this state the following notice not later than the 30th
22 day after the registrant commences servicing the loan:

23 "COMPLAINTS REGARDING THE SERVICING OF YOUR TEXAS MORTGAGE
24 SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING,
25 _____ (street address of the Department
26 of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS
27 AVAILABLE AT _____ (telephone number of the Department of

1 Savings and Mortgage Lending's toll-free consumer hotline)."

2 SECTION 46. The heading to Section 158.102, Finance Code,
3 is amended to read as follows:

4 Sec. 158.102. INVESTIGATIONS [~~INVESTIGATION OF COMPLAINTS~~
5 ~~AGAINST REGISTRANT~~]; SURCHARGE.

6 SECTION 47. Section 158.102, Finance Code, is amended by
7 adding Subsections (a-1) and (e) to read as follows:

8 (a-1) For reasonable cause, the commissioner at any time may
9 investigate a registrant to determine whether the registrant is
10 complying with this chapter and applicable rules.

11 (e) The commissioner may conduct an undercover or covert
12 investigation only if the commissioner, after due consideration of
13 the circumstances, determines that the investigation is necessary
14 to prevent immediate harm and to carry out the purposes of this
15 chapter.

16 SECTION 48. The heading to Section 158.105, Finance Code,
17 is amended to read as follows:

18 Sec. 158.105. UNREGISTERED ACTIVITY; CEASE AND DESIST
19 ORDER.

20 SECTION 49. Section 158.105(b), Finance Code, is amended to
21 read as follows:

22 (b) An order issued under Subsection (a) must contain a
23 reasonably detailed statement of the facts on which the order is
24 made [issued]. The order may assess an administrative penalty in an
25 amount not to exceed \$1,000 per day for each violation.

26 SECTION 50. The Finance Commission of Texas shall adopt
27 rules to implement Section 156.004(a), Finance Code, as amended by

1 this Act, not later than January 1, 2018.

2 SECTION 51. Section 156.004(a), Finance Code, as amended by
3 this Act, applies only to an application for a residential mortgage
4 loan that is submitted on or after January 1, 2018. An application
5 for a residential mortgage loan that is submitted before January 1,
6 2018, is governed by the law in effect on the date the application
7 was submitted, and the former law is continued in effect for that
8 purpose.

9 SECTION 52. Section 157.0021(b), Finance Code, as amended
10 by this Act, and Section 158.101, Finance Code, as amended by this
11 Act, apply only to a residential mortgage loan that is made on or
12 after the effective date of this Act. A residential mortgage loan
13 that is made before the effective date of this Act is governed by
14 the law in effect on the date the residential mortgage loan was
15 made, and the former law is continued in effect for that purpose.

16 SECTION 53. Section 158.105(b), Finance Code, as amended by
17 this Act, applies only to a violation committed on or after
18 September 1, 2017. A violation committed before September 1, 2017,
19 is governed by the law in effect on the date the violation was
20 committed, and the former law is continued in effect for that
21 purpose. For purposes of this section, a violation was committed
22 before September 1, 2017, if any element of the violation occurred
23 before that date.

24 SECTION 54. (a) Except as otherwise provided by this
25 section, this Act takes effect September 1, 2017.

26 (b) Section 156.004(a), Finance Code, as amended by this
27 Act, takes effect January 1, 2018.