

PROSPERITY BANCSHARES INC

Form S-8

February 20, 2014

As filed with the Securities and Exchange Commission on February 20, 2014

Registration No. 333-

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM S-8**

**REGISTRATION STATEMENT**

***UNDER***

***THE SECURITIES ACT OF 1933***

**PROSPERITY BANCSHARES, INC.**

**(Exact name of registrant as specified in its charter)**

**Texas**  
**(State or other jurisdiction of**  
**incorporation or organization)**

**74-2331986**  
**(I.R.S. Employer**  
**Identification No.)**

**Prosperity Bank Plaza**

**4295 San Felipe**

**Houston, Texas 77027**

**(713) 693-9300**

**(Address of Principal Executive Offices Including Zip Code)**

**Prosperity Bancshares, Inc.**

**2012 Stock Incentive Plan**

**(Full title of Plans)**

**David Zalman**

**Prosperity Bancshares, Inc.**

**Prosperity Bank Plaza**

**4295 San Felipe**

**Houston, Texas 77027**

**(Name and address of agent for service)**

**(713) 693-9300**

**(Telephone number, including area code, of agent for service)**

*Copies to:*

**Jason M. Jean**  
**Bracewell & Giuliani LLP**  
**South Tower Pennzoil Place**  
**711 Louisiana Street, Suite 2300**  
**Houston, Texas 77002**  
**(713) 221-1328**  
**(713) 437-5338 (Fax)**

**Charlotte M. Rasche**  
**Executive Vice President and**  
**General Counsel**  
**80 Sugar Creek Center Blvd.**  
**Sugar Land, Texas 77478**  
**(281) 269-7205**  
**(281) 269-7222 (Fax)**

**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities to be Registered</b>	<b>Amount to be Registered(1)</b>	<b>Proposed Maximum Offering Price Per Share(1)(2)</b>	<b>Proposed Maximum Aggregate Offering Price(2)</b>	<b>Amount of Registration Fee</b>
Common Stock, \$1.00 par value	1,250,000 shares	\$ 63.42	\$ 79,275,000	\$ 10,210.62

- (1) This Registration Statement shall also include an indeterminate number of additional shares of Common Stock which may be offered and issued pursuant to the antidilution provisions of the Prosperity Bancshares, Inc. 2012 Stock Incentive Plan (the Plan ).
- (2) Estimated solely for purposes of calculating the registration fee in accordance with Rules 457(c) and 457(h) of the Securities Act, based upon the average of the high and low prices of Common Stock on February 18, 2014, as reported on the New York Stock Exchange, of \$63.42.

**PART I.**

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.\*

Item 2. Registrant Information and Employee Plan Annual Information.\*

\* The information required by Items 1 and 2 of Part I of Form S-8 is omitted from this Registration Statement in accordance with the Note to Part I of Form S-8 and Rule 428 promulgated under the Securities Act of 1933, as amended (the Securities Act ).

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**PART II.**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents filed by Prosperity Bancshares, Inc., a Texas corporation (the Registrant), (Commission File No. 001-35388) with the Securities and Exchange Commission (the Commission) are incorporated by reference into this Registration Statement as of their respective dates, except to the extent that any information contained in such filings is deemed furnished in connection with Commission rules:

the Registrant's Annual Report on Form 10-K for the year ended December 31, 2012;

the Registrant's Quarterly Reports on Form 10-Q for the quarters ended March 31, June 30, and September 30, 2013;

the Registrant's Current Reports on Form 8-K filed on July 30, 2012; January 3, January 31, March 7, April 18, July 1, September 4, November 1, and December 23, 2013; and January 30, 2014; and

the description of the Registrant's Common Stock, par value \$1.00 per share, that is contained in its Registration Statements on Form 8-A dated November 10, 1998 and December 22, 2011, including any amendment or report filed with the Commission for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), other than any portions of the respective filings that were furnished, pursuant to Item 2.02 or Item 7.01 of Current Reports on Form 8-K (including exhibits related thereto) or other applicable Commission rules, rather than filed, after the date of this Registration Statement and prior to the filing of a post-effective amendment hereto which indicates that all securities offered have been sold or which deregisters all such securities then remaining unsold, shall be deemed to be incorporated herein by reference and to be a part hereof from the date of filing such documents. Any statement contained herein or in any document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed to constitute a part of this Registration Statement, except as so modified or superseded.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Amended and Restated Articles of Incorporation and Amended and Restated Bylaws of the Registrant require the Registrant to indemnify officers and directors of the Registrant to the fullest extent permitted by Texas law. Generally, Chapter 8 of the Texas Business Organizations Code ( TBOC ) permits a corporation to indemnify a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person was or is a director or officer if it is determined that such person (1) conducted himself in good faith, (2) reasonably believed (a) in the case of conduct in his official capacity as a director or officer of the corporation, that his conduct was in the corporation's best interest, or (b) in other cases, that his conduct was at least not opposed

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to the corporation's best interests, and (3) in the case of any criminal proceeding, had no reasonable cause to believe that his conduct was unlawful. In addition, the TBOC requires a corporation to indemnify a director or officer for any action that such director or officer is wholly successful in defending on the merits.

The Registrant's Amended and Restated Articles of Incorporation provide that a director of the Registrant will not be liable to the corporation for monetary damages for an act or omission in the director's capacity as a director, except to the extent not permitted by law. Texas law does not permit exculpation of liability in the case of (i) a breach of the director's duty of loyalty to the corporation or its shareholders; (ii) an act or omission not in good faith that constitutes a breach of duty of the director to the corporation or that involves intentional misconduct or a knowing violation of the law; (iii) a transaction from which a director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or (iv) an act or omission for which the liability of the director is expressly provided by statute.

The Registrant's Amended and Restated Articles of Incorporation permit the Registrant to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Registrant or who is or was serving at the request of the Registrant as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another business, foreign, domestic or non-profit corporation, partnership, joint venture, sole proprietorship, trust or other enterprise or employee benefit plan, against any liability asserted against such person and incurred by such person in such a capacity or arising out of such person's status as such a person, whether or not the Registrant would have the power to indemnify such person against that liability.

The Amended and Restated Articles of Incorporation and Amended and Restated Bylaws of the Registrant were previously filed with the Commission and are incorporated by reference into the Registration Statement.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

- 3.1 Amended and Restated Articles of Incorporation of the Registrant (incorporated herein by reference to Exhibit 3.1 to the Registrant's Registration Statement on Form S-1 (Registration No. 333-63267) (the "Registration Statement")).
- 3.2 Articles of Amendment to Amended and Restated Articles of Incorporation of the Registrant (incorporated herein by reference to Exhibit 3.2 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2006).
- 3.3 Amended and Restated Bylaws of the Registrant (incorporated herein by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on October 19, 2007).
- 4.1 Form of certificate representing shares of Prosperity Bancshares, Inc. Common Stock (incorporated herein by reference to Exhibit 4 to the Registration Statement).
- 4.2 Prosperity Bancshares, Inc. 2012 Stock Incentive Plan (incorporated herein by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on April 23, 2012).
- 4.3\* Form of Prosperity Bancshares, Inc. Employee Restricted Stock Agreement.

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- 4.4\* Form of Prosperity Bancshares, Inc. Non-Employee Restricted Stock Agreement.
- 5.1\* Opinion of Bracewell & Giuliani LLP as to the validity of the Common Stock registered hereunder.
- 23.1\* Consent of Deloitte & Touche LLP.

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- 23.2\* Consent of BKD, LLP, independent public accounting firm of American State Financial Corporation.
- 23.3\* Consent of Bracewell & Giuliani LLP (included in the opinion filed as Exhibit 5.1 hereto).
- 24.1\* Powers of Attorney (included on signature page hereto).

\* Filed herewith.

Management contract or compensatory plan or arrangement.

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement;

*provided, however*, that the undertakings set forth in paragraphs (a)(1)(i) and (a)(1)(ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for the purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and where applicable, each filing on an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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(h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement or amendment to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Houston, State of Texas on February 20, 2014.

PROSPERITY BANCSHARES, INC.  
(Registrant)

By: /s/ David Zalman  
David Zalman  
President and Chief Executive Officer

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints David Zalman the undersigned's true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for the undersigned and in the undersigned's name, place and stead, in any and all capacities (until revoked in writing), to sign this Registration Statement on Form S-8 and any and all amendments (including post-effective amendments) thereto, to file the same, together with all exhibits thereto and documents in connection therewith, with the Securities and Exchange Commission, to sign any and all applications, registration statements, notices and other documents necessary or advisable to comply with the applicable state securities authorities, granting unto said attorney-in-fact and agent, or his substitute or substitutes, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises in order to effectuate the same as fully to all intents and purposes as the undersigned might or could do if personally present, thereby ratifying and confirming all that said attorneys-in-fact and agents, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement or amendment has been signed by the following persons in the capacities indicated and on the 20<sup>th</sup> day of February, 2014.

Signature	Title	Date
/s/ David Zalman David Zalman	Chairman of the Board and Chief Executive Officer (principal executive officer); Director	February 20, 2014
/s/ David Hollaway, CPA David Hollaway, CPA	Chief Financial Officer (principal financial officer and principal accounting officer)	February 20, 2014
/s/ James A. Bouligny  James A. Bouligny	Director	February 20, 2014
/s/ W.R. Collier	Director	

February 20,  
2014

W.R. Collier

/s/ William H. Fagan, M.D.

Director

February 20,  
2014

William H. Fagan, M.D.

/s/ Leah Henderson	Director	February 20, 2014
Leah Henderson		
/s/ Ned S. Holmes	Director	February 20, 2014
Ned S. Holmes		
/s/ Perry Mueller, Jr., D.D.S.	Director	February 20, 2014
Perry Mueller, Jr., D.D.S.		
/s/ Harrison Stafford II	Director	February 20, 2014
Harrison Stafford II		
/s/ Robert Steelhammer Robert Steelhammer	Director	February 20, 2014
/s/ H.E. Timanus, Jr. H.E. Timanus, Jr.	Director	February 20, 2014

## INDEX TO EXHIBITS

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