

FINANCE CODE

TITLE 3. FINANCIAL INSTITUTIONS AND BUSINESSES

SUBTITLE F. TRUST COMPANIES

CHAPTER 182. POWERS, ORGANIZATION, AND FINANCIAL REQUIREMENTS

SUBCHAPTER A. ORGANIZATION AND POWERS IN GENERAL

Sec. 182.001. ORGANIZATION AND GENERAL POWERS OF STATE TRUST COMPANY. (a) Subject to Subsection (g) and the other provisions of this chapter, one or more persons may organize and charter a state trust company as a state trust association or a limited trust association.

(b) A state trust company may engage in the trust business by:

- (1) acting as trustee under a written agreement;
- (2) receiving money and other property in its capacity as trustee for investment in real or personal property;
- (3) acting as trustee and performing the fiduciary duties committed or transferred to it by order of a court;
- (4) acting as executor, administrator, or trustee of the estate of a deceased person;
- (5) acting as a custodian, guardian, conservator, or trustee for a minor or incapacitated person;
- (6) acting as a successor fiduciary to a trust institution or other fiduciary;
- (7) receiving for safekeeping personal property;
- (8) acting as custodian, assignee, transfer agent, escrow agent, registrar, or receiver;
- (9) acting as investment advisor, agent, or attorney in fact according to an applicable agreement;
- (10) with the prior written approval of the banking commissioner and to the extent consistent with applicable fiduciary principles, engaging in a financial activity or an activity incidental or complementary to a financial activity, directly or through a subsidiary;
- (11) exercising additional powers expressly conferred by rule of the finance commission; and

(12) exercising any incidental power that is reasonably necessary to enable it to fully exercise the powers expressly conferred according to commonly accepted fiduciary customs and usages.

(c) For purposes of other state law, a trust association is considered a corporation and a limited trust association is considered a limited liability company. To the extent consistent with this subtitle, a trust association may exercise the powers of a Texas business corporation and a limited trust association may exercise the powers of a Texas limited liability company as reasonably necessary to enable exercise of specific powers under this subtitle.

(d) A state trust company may contribute to a community fund or to a charitable, philanthropic, or benevolent instrumentality conducive to public welfare an amount that the state trust company's board considers appropriate and in the interests of the state trust company.

(e) Subject to Section 184.301, a state trust company may deposit trust funds with itself.

(f) A state trust company insured by the Federal Deposit Insurance Corporation may receive and pay deposits, with or without interest, made by the United States, the state, a county, or a municipality.

(g) In the exercise of discretion consistent with the purposes of this subtitle, the banking commissioner may require a state trust company to conduct an otherwise authorized activity through a subsidiary.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 20, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 6.008(a), eff. Sept. 1, 2001.

Sec. 182.002. CERTIFICATE OF FORMATION OF STATE TRUST COMPANY. (a) The certificate of formation of a state trust company must be signed and acknowledged by each organizer and must contain:

(1) the name of the state trust company, subject to

Subsection (b);

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) all subscriptions received have been

irrevocably paid in cash;

(9) any provision consistent with law that the organizers elect to set forth in the certificate of formation for the regulation of the internal affairs of the state trust company or that is otherwise required by this subtitle to be set forth in the certificate of formation;

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

(11) either:

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

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

(b) The banking commissioner may determine that a proposed state trust company name is potentially misleading to the public and require the organizers to select a different name.

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

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. [2754](#)), Sec. 10, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. [804](#)), Sec. 16, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. [804](#)), Sec. 17, eff. June 14, 2013.

Sec. 182.003. APPLICATION FOR STATE TRUST COMPANY CHARTER; STANDARDS FOR APPROVAL. (a) An application for a state trust company charter must be made under oath and in the form required by the banking commissioner. The application must be supported by information, records, and opinions of counsel that the banking commissioner requires. The application must be accompanied by all charter fees and deposits required by statute or rule.

(b) The banking commissioner shall grant a state trust company charter only on proof satisfactory to the banking commissioner that public convenience and advantage will be promoted by the establishment of the state trust company. In determining whether public convenience and advantage will be promoted, the banking commissioner shall consider the convenience of the public to be served and whether:

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

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

(3) the proposed officers, directors, and managers, or managing participants, as a group have sufficient fiduciary experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the state trust company will operate in compliance with law and that success of the state trust company is probable;

(4) each principal shareholder or participant has sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law; and

(5) the organizers are acting in good faith.

(c) The organizers bear the burden of proof to establish that public convenience and advantage will be promoted by the establishment of the state trust company. The failure of an applicant to furnish required information, opinions of counsel, and

other material, or the required fee, is considered an abandonment of the application.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.004. NOTICE AND INVESTIGATION OF CHARTER APPLICATION. (a) The organizers shall solicit comments and protests by publishing notice of the application, its date of filing, and the identity of the organizers, in the form and frequency specified by the banking commissioner, in a newspaper of general circulation in the county where the initial home office of the proposed state trust company is to be located, or in another publication or location as directed by the banking commissioner. The banking commissioner may require the organizers to publish the notice at other locations reasonably necessary to solicit the views of potentially affected persons.

(b) At the expense of the organizers, the banking commissioner shall thoroughly investigate the application and inquire fully into the identity and character of each proposed director, manager, officer, managing participant, and principal shareholder or participant. The banking commissioner shall prepare a written report of the investigation.

(c) Rules adopted under this subtitle may specify the confidential or nonconfidential character of information obtained or prepared by the department under this section. Except as provided by Subchapter D, Chapter 181, or in rules regarding confidential information, the business plan of the applicant and the financial statement of a proposed officer, director, manager, or managing participant are confidential and not subject to public disclosure.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.07, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 11, eff. September 1, 2007.

Sec. 182.005. PROTEST; HEARING; DECISION ON CHARTER APPLICATION. (a) A protest of a charter application must be received by the department before the 15th day after the date the organizers publish notice under Section 182.004(a) and must be accompanied by the fees and deposits required by law. If the protest is untimely, the department shall return all submitted fees and deposits to the protesting party. If the protest is timely, the department shall notify the applicant of the protest and mail or deliver a complete copy of the nonconfidential sections of the charter application to the protesting party before the 15th day after the later of the date of receipt of the protest or receipt of the charter application.

(b) A protesting party must file a detailed protest responding to each contested statement contained in the nonconfidential portion of the application not later than the 20th day after the date the protesting party receives the application from the department, and relate each statement and response to the standards for approval set forth in Section 182.003(b). The applicant must file a written reply to the protesting party's detailed response on or before the 10th day after the date the response is filed. The protesting party's response and the applicant's reply must be verified by affidavit and must certify that a copy was served on the opposing party. If applicable, statements in the response and in the reply may be supported by references to data available in sources of which official notice may properly be taken. Any comment received by the department and any reply of the applicant to the comment shall be made available to the protesting party.

(c) The banking commissioner may not be compelled to hold a hearing before granting or denying the charter application. In the exercise of discretion, the banking commissioner may consider granting a hearing on a charter application at the request of the applicant or a protesting party. The banking commissioner may order a hearing regardless of whether a hearing has been requested by a party. A party requesting a hearing must indicate with specificity the issues involved that cannot be determined on the basis of the record compiled under Subsection (b) and why the issues cannot be

determined. A request for hearing and the banking commissioner's decision with regard to granting a hearing shall be made a part of the record. If the banking commissioner sets a hearing, the banking commissioner shall conduct a public hearing and as many prehearing conferences and opportunities for discovery as the banking commissioner considers advisable and consistent with governing statutes and rules, except that the banking commissioner may not permit discovery of confidential information in the charter application or the investigation report.

(d) Based on the record, the banking commissioner shall determine whether all of the necessary conditions set forth in Section 182.003(b) have been established and shall enter an order granting or denying the charter.

(e) The banking commissioner may make approval of any application conditional. The banking commissioner shall include any conditions in the order granting the charter.

(f) Chapter 2001, Government Code, does not apply to a charter application filed for the purpose of assuming all or any portion of the assets, liabilities, and accounts of a trust institution considered by the banking commissioner to be in hazardous condition.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.009(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 12, eff. September 1, 2007.

Sec. 182.006. ISSUANCE OF CHARTER. A state trust company may not engage in the trust business until it receives its charter from the banking commissioner. The banking commissioner may not deliver the charter until the state trust company has:

(1) received cash in at least the full amount of restricted capital from subscriptions for the issuance of shares or participation shares;

(2) elected or qualified the initial officers and directors or managers, as appropriate, named in the application for

charter or other officers and directors or managers approved by the banking commissioner; and

(3) complied with all other requirements of this subtitle relating to the organization of the state trust company. Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.007. DEADLINE TO BEGIN BUSINESS. If a state trust company does not open and engage in the trust business within six months after the date it receives its charter or conditional approval of application for charter, the banking commissioner may revoke the charter or cancel the conditional approval of application for charter without judicial action. Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.008. RESTRICTED CAPITAL. (a) The banking commissioner may not issue a charter to a state trust company having restricted capital of less than \$2 million.

(b) The banking commissioner may, on a case-by-case basis, require additional restricted capital for a proposed or existing state trust company if the banking commissioner finds the condition and operations of the existing state trust company or the proposed scope or type of operations of the proposed state trust company requires additional restricted capital to protect the safety and soundness of the state trust company. The safety and soundness factors to be considered by the banking commissioner in the exercise of discretion include:

(1) the nature and type of business the state trust company conducts;

(2) the nature and degree of liquidity in assets held in a corporate capacity;

(3) the amount, type, and depository of fiduciary assets that the state trust company manages;

(4) the complexity of the state trust company's fiduciary duties and degree of discretion undertaken;

(5) the competence and experience of the state trust

company's management;

(6) the extent and adequacy of internal controls maintained by the state trust company;

(7) the presence or absence of annual unqualified audits by an independent certified public accountant;

(8) the reasonableness of the state trust company's business plans for retaining or acquiring additional restricted capital; and

(9) the existence and adequacy of insurance obtained or held by the state trust company to protect its clients, beneficiaries, and grantors.

(c) The effective date of an order under Subsection (b) must be stated in the order and must be on or after the 21st day after the date the order is mailed or delivered. Unless the state trust company requests a hearing before the banking commissioner in writing before the effective date of the order, the order takes effect and is final and nonappealable. This subsection does not prohibit an application to reduce capital requirements of an existing state trust company under Subsection (e) or under Section [182.011](#).

(d) Subject to Subsection (e) and Section [182.011](#), a state trust company to which the banking commissioner issues a charter shall at all times maintain restricted capital in at least the amount required under Subsection (a) and in any additional amount the banking commissioner requires under Subsection (b).

(e) Notwithstanding Subsection (a), on application, the banking commissioner may, on a case-by-case basis in the exercise of discretion, reduce the amount of minimum restricted capital required for a state trust company in a manner consistent with protecting the state trust company's safety and soundness. In making a determination under this subsection, the banking commissioner shall consider the factors listed by Subsection (b).
Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. [875](#)), Sec. 4, eff. September 1, 2015.

Sec. 182.009. APPLICATION OF GENERAL CORPORATE LAW.

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

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

(2) the right of shareholders or participants to cumulative voting in the election of directors or managers exists only if granted by the state trust company's certificate of formation.

(b) Unless expressly authorized by this subtitle or a rule of the finance commission, a state trust company may not take an action authorized by a law listed under Subsection (a) regarding its corporate status, capital structure, or a matter of corporate governance, of the type for which a law listed under Subsection (a) would require a filing with the secretary of state if the state trust company were a filing entity, without submitting the filing to the banking commissioner for prior written approval of the action.

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

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

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 21, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 68, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 18, eff.

June 14, 2013.

Sec. 182.010. PARITY. (a) A state trust company has the same rights and privileges with respect to the exercise of fiduciary powers that are or may be granted to a trust institution that maintains its principal office or a branch or trust office in this state, except that this section may not be used by a state trust company to:

(1) diminish its otherwise applicable fiduciary duties to a client under the laws of this state; or

(2) avoid otherwise applicable consumer protection laws of this state.

(b) A state trust company that intends to exercise a right or privilege with respect to the exercise of fiduciary powers granted to a trust institution described in Subsection (a) that is not authorized for state trust companies under the statutes and rules of this state other than under this section shall submit a letter to the banking commissioner, describing in detail the activity in which the state trust company intends to engage and the specific authority for the trust institution described in Subsection (a) to undertake the proposed activity. The state trust company shall attach copies, if available, of relevant state and federal law, including regulations and interpretive letters. The state trust company may begin to perform the proposed activity after the 30th day after the date the banking commissioner receives the state trust company's letter unless the banking commissioner specifies an earlier or later date or prohibits the activity. The banking commissioner may prohibit the state trust company from performing the activity only if the banking commissioner finds that:

(1) a trust institution described in Subsection (a) does not possess the specific right or privilege to perform the activity the state trust company seeks to perform; or

(2) the performance of the activity by the state trust company would adversely affect the safety and soundness of the requesting state trust company.

(c) The banking commissioner may extend the 30-day period

under Subsection (b) if the banking commissioner determines that the state trust company's letter raises issues requiring additional information or additional time for analysis. If the 30-day period is extended, the state trust company may perform the proposed activity only on prior written approval by the banking commissioner, except that the banking commissioner must approve or prohibit the proposed activity or convene a hearing under Section 181.201 not later than the 60th day after the date the commissioner receives the state trust company's letter. If a hearing is convened, the banking commissioner must approve or prohibit the proposed activity not later than the 30th day after the date the hearing is completed.

(d) A state trust company that is denied the requested right or privilege to engage in an activity by the banking commissioner under this section may appeal as provided by Sections 181.202 and 181.204 or may resubmit a letter under this section with additional information or authority relevant to the banking commissioner's determination. A denial is immediately final for purposes of appeal.

(e) The finance commission may adopt rules implementing the method or manner in which a state trust company exercises specific rights and privileges, including rules regarding the exercise of rights and privileges that would be prohibited to state trust companies under state law except as provided by this section. The finance commission may not adopt rules under this subsection unless it finds that:

(1) trust institutions described in Subsection (a) possess the rights or privileges to perform activities the rules would permit state trust companies to perform; and

(2) if the rights and privileges would be prohibited to state trust companies under other state law, the rules contain adequate safeguards and controls, consistent with safety and soundness, to address the concern of the legislature evidenced by the state law the rules would impact.

(f) The exercise of rights and privileges by a state trust company in compliance with and in the manner authorized by this section is not a violation of any statute of this state.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.010(a), eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 23, eff. September 1, 2019.

Sec. 182.0105. FINANCIAL ACTIVITIES. (a) The finance commission by rule may determine that an activity not otherwise approved or authorized for state trust companies is:

- (1) a financial activity;
- (2) incidental to a financial activity; or
- (3) complementary to a financial activity.

(b) In adopting a rule under Subsection (a), the finance commission shall consider:

(1) the purposes of this subtitle and the Gramm-Leach-Bliley Act (Pub. L. No. 106-102);

(2) changes or reasonably expected changes in the marketplace in which state trust companies compete;

(3) changes or reasonably expected changes in the technology for delivering fiduciary and financial services;

(4) whether the activity is necessary or appropriate to allow a state trust company to:

(A) compete effectively with another company seeking to provide fiduciary and financial services;

(B) efficiently deliver information and services that are financial in nature through the use of technological means, including an application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; or

(C) offer customers available or emerging technological means for using fiduciary and financial services or for the document imaging of data;

(5) whether the activity would violate applicable fiduciary duties or otherwise pose a substantial risk to the safety and soundness of a state trust company or the fiduciary and financial system generally; and

(6) if otherwise determined to be permissible, whether the conduct of the activity by a state trust company should be qualified through the imposition of reasonable and necessary conditions to protect the public and require appropriate regard for safety and soundness of the trust company and the fiduciary and financial system generally.

(c) A rule adopted by the finance commission under this section does not alter or negate applicable licensing and regulatory requirements administered by a functional regulatory agency of this state, as defined by Section 31.303, including licensing and regulatory requirements pertaining to:

- (1) insurance activities;
- (2) securities activities; and
- (3) real estate development, marketing, and sales activities.

Added by Acts 2001, 77th Leg., ch. 528, Sec. 22, eff. Sept. 1, 2001.

Sec. 182.011. EXEMPTION FROM STATUTORY PROVISIONS FOR CERTAIN STATE TRUST COMPANIES. (a) A state trust company may request in writing that it be exempted from specified provisions of this subtitle. The banking commissioner may grant the exemption in whole or in part, subject to Subsection (c), if the banking commissioner finds that the state trust company:

- (1) has only family clients and transacts business solely on behalf of family clients and their related interests;
- (2) is wholly owned, directly or indirectly, legally or beneficially, by one or more family members; and
- (3) does not hold itself out to the general public as a corporate fiduciary for hire.

(a-1) In this section:

- (1) "Family client" includes:
 - (A) a family member;
 - (B) a former family member;
 - (C) a key employee of the trust company as defined by and to the extent permitted by rules adopted under Subsection (e), including a former key employee for a reasonable transition period specified by rule;

(D) a nonprofit organization, charitable foundation, charitable trust, including a charitable lead trust or charitable remainder trust whose only current beneficiaries are other family clients and charitable or nonprofit organizations, or another charitable organization for which all the funding came exclusively from one or more other family clients;

(E) the estate of a family member or former family member;

(F) an irrevocable trust under which one or more other family clients are the only current beneficiaries;

(G) an irrevocable trust funded exclusively by one or more family clients in which other family clients and nonprofit organizations, charitable foundations, charitable trusts, or other charitable organizations are the only current beneficiaries;

(H) a company wholly owned by, and operated for the sole benefit of, one or more other family clients;

(I) a revocable trust of which one or more other family clients are the sole grantors, including any such trust that becomes irrevocable, wholly or partly, for a reasonable transition period as specified by rule; and

(J) any other persons as may be permitted by rules adopted under Subsection (e).

(2) "Family member," with respect to an individual, means an individual related to the individual within the seventh degree of consanguinity or affinity, as determined under Subchapter B, Chapter 573, Government Code, except that a foster child is considered the child of the foster parent and a person for whom a guardian was appointed before the person's 18th birthday is considered the child of the guardian.

(3) "Former family member" includes a former spouse or stepchild who was a family member but is no longer a family member due to a divorce or other similar event.

(b) At the expense of a state trust company, the banking commissioner may examine or investigate the state trust company in connection with an application for an exemption. Unless the application presents novel or unusual questions, the banking

commissioner shall approve the application for exemption or set the application for hearing not later than the 61st day after the date the banking commissioner considers the application complete and accepted for filing. The banking commissioner may require the submission of additional information as considered necessary to an informed decision.

(c) An exemption granted under this section may be made subject to conditions or limitations imposed by the banking commissioner consistent with this subtitle.

(d) A state trust company that is or has been exempt from a provision of this subtitle under this section or a predecessor statute may not transact business with the general public unless the banking commissioner determines, as provided by Section [182.003](#), that public convenience and advantage will be promoted by permitting the state trust company to engage in the trust business with the general public.

(e) The finance commission may adopt rules:

(1) defining other circumstances under which a state trust company may be exempted from a provision of this subtitle because it does not transact business with the general public;

(2) specifying the provisions of this subtitle that are subject to an exemption request;

(3) establishing procedures and requirements for obtaining, maintaining, or revoking an exemption; and

(4) defining or further defining terms used by this section.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. [875](#)), Sec. 5, eff. September 1, 2015.

Sec. 182.012. APPLICATION FOR EXEMPTION. (a) A state trust company requesting an exemption under Section [182.011](#) shall file an application with the banking commissioner that includes:

(1) a nonrefundable application fee set by the finance commission;

(2) a detailed sworn statement showing the state trust company's assets and liabilities as of the end of the calendar month preceding the filing of the application;

(3) a sworn statement of the reason for requesting the exemption;

(4) a sworn statement that the state trust company:

(A) has or will have only family clients and transacts or will transact business solely on behalf of family clients and their related interests;

(B) is or will be wholly owned, directly or indirectly, legally or beneficially, by one or more family members;

(C) does not or will not hold itself out to the general public as a corporate fiduciary for hire; and

(D) will not transact business with the general public without the prior written permission of the banking commissioner;

(5) the current street mailing address and telephone number of the physical location in this state at which the state trust company will maintain its books and records, with a sworn statement that the address given is true and correct and is not a United States Postal Service post office box or a private mail box, postal box, or mail drop; and

(6) a list of the specific provisions of this subtitle for which the request for an exemption is made.

(b) The banking commissioner may not approve an exemption unless the application is completed as required by Subsection (a).

(c) In this section, "family client" and "family member" have the meanings assigned by Section [182.011](#).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. [875](#)), Sec. 6, eff. September 1, 2015.

Sec. 182.013. ANNUAL CERTIFICATION FOR EXEMPT STATE TRUST COMPANY. (a) An exempt state trust company shall file a certification annually with its statement of condition and income,

on a form provided by the banking commissioner, that it is maintaining the conditions and limitations of its exemption. The certification must be accompanied by a fee set by the finance commission.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 250 , Sec. 11(2), eff. September 1, 2015.

(c) The state trust company shall maintain records necessary to verify the certification. The records are subject to examination under Section [181.104](#).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. [875](#)), Sec. 7, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. [875](#)), Sec. 11(2), eff. September 1, 2015.

Sec. 182.014. LIMITATION ON EFFECT OF EXEMPTION. (a) An exempt state trust company shall comply with the home office provisions of Section [182.202](#).

(b) The grant of an exemption to a state trust company does not affect the state trust company's obligation to pay any corporate franchise tax required by state law.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.015. CHANGE OF CONTROL OF EXEMPT STATE TRUST COMPANY. If control of an exempt state trust company is sold or otherwise transferred, the acquiring person must comply with Sections [182.003](#), [182.004](#), [182.005](#), [183.001](#), and [183.002](#). For the exempt status of the state trust company to continue, the acquiring person must file a certification with the banking commissioner that the state trust company will comply, or continue to comply, with the requirements of Section [182.011](#) after control is transferred. The banking commissioner may examine or investigate the acquiring person and the state trust company as necessary to verify the certification. If the commissioner determines that the state

trust company will not comply, or continue to comply, with the requirements of Section 182.011 after control is transferred, the commissioner shall terminate the exemption on the effective date of the transfer. After the termination, the acquiring person must file a separate application to obtain a new exemption for the state trust company under Section 182.011.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. 875), Sec. 8, eff. September 1, 2015.

Sec. 182.016. GROUNDS FOR REVOCATION OF EXEMPTION. The banking commissioner may revoke an exemption of a state trust company if the trust company:

(1) makes a false statement under oath on any document required to be filed by this subtitle or finance commission rule;

(2) fails to submit to an examination as required by Section 181.104;

(3) withholds requested information from the banking commissioner; or

(4) violates any provision of this subtitle applicable to an exempt state trust company.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.017. NOTICE AND EFFECT OF REVOCATION OF EXEMPTION.

(a) If the banking commissioner determines from examination or other credible evidence that an exempt state trust company has violated any of the requirements of this subchapter relating to an exempt state trust company, the banking commissioner may by personal delivery or registered or certified mail, return receipt requested, notify the state trust company in writing that the state trust company's exemption has been revoked. The notice must state grounds for the revocation with reasonable certainty. The notice must state its effective date, which may not be earlier than the fifth day after the date the notification is mailed or delivered.

(b) The revocation takes effect for the state trust company if the state trust company does not request a hearing in writing before the effective date. After taking effect the revocation is final and nonappealable as to that state trust company, and the state trust company is subject to all of the requirements and provisions of this subtitle applicable to nonexempt state trust companies.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.018. ACTION AFTER REVOCATION OF EXEMPTION. (a) A state trust company must comply with all of the provisions of Sections 182.003(b) and (c) not later than the fifth day after the date the revocation of the exemption takes effect. If, however, the banking commissioner determines at the time of revocation that the state trust company has been engaging in or attempting to engage in acts intended or designed to deceive or defraud the public, the banking commissioner, in the banking commissioner's sole discretion, may waive the compliance period provided by this subsection.

(b) If within the period prescribed by Subsection (a) the state trust company does not comply with all of the provisions of this subtitle, including capitalization requirements determined by the banking commissioner as necessary to assure the safety and soundness of the state trust company, the banking commissioner may:

(1) institute any action or remedy prescribed by this subtitle or any applicable rule; or

(2) refer the state trust company to the attorney general for institution of a quo warranto proceeding to revoke the state trust company's charter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.019. PRIOR EXEMPTION. (a) Subject to Subsection (b), a state trust company that was exempt before September 1, 1997, may no longer operate with that prior exempt status after the earlier of:

(1) September 1, 2020; or

(2) the date control is sold or otherwise transferred.

(b) A state trust company may apply for a new exemption under Section 182.011 before loss of its exempt status under Subsection (a).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. 875), Sec. 9, eff. September 1, 2015.

Sec. 182.020. FOREIGN CORPORATION EXERCISING TRUST POWERS.

(a) A foreign corporation may not conduct a trust business in this state. A foreign corporation may control a state trust company in this state if the state trust company is formed or acquired and operated as provided by this subtitle and applicable rules.

(b) A foreign corporation or other entity chartered or domiciled in another jurisdiction as a trust company or depository institution with trust powers may act as a trustee in this state only as provided by Subchapter A, Chapter 505, Estates Code.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 20.016, eff. September 1, 2015.

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

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

(2) rendering a service customarily performed as an attorney in a manner approved and authorized by the Supreme Court of Texas or State Bar of Texas;

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

- (4) conducting business as a trust institution if the exercise of fiduciary powers in this state by the trust institution is not otherwise prohibited by law;
- (5) engaging in a business regulated by the Office of Consumer Credit Commissioner, except as limited by rules adopted by the finance commission;
- (6) receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Texas Real Estate Commission;
- (7) engaging in a securities transaction or providing an investment advisory service as a licensed and registered dealer, salesman, or advisor to the extent that the activity is regulated by the State Securities Board or the Securities and Exchange Commission;
- (8) engaging in the sale and administration of an insurance product by an insurance company or agent authorized or licensed by the Texas Department of Insurance to the extent that the activity is regulated by the Texas Department of Insurance;
- (9) engaging in the lawful sale of prepaid funeral benefits under a permit issued by the banking commissioner under Chapter 154;
- (10) engaging in the lawful business of a perpetual care cemetery corporation under Chapter 712, Health and Safety Code;
- (11) engaging as a principal in the money services business under a license issued by the banking commissioner under Chapter 152;
- (12) acting as trustee under a voting trust as provided by Section 6.251, Business Organizations Code;
- (13) acting as trustee by a public, private, or independent institution of higher education or a university system, as defined by Section 61.003, Education Code, including an affiliated foundation or corporation of such an institution or system acting as trustee as provided by the Education Code;
- (14) engaging in another activity expressly excluded from the application of this subtitle by rule of the finance commission;

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

(16) serving as trustee of a charitable trust as provided by Section 2.106, Business Organizations Code;

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

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

(19) providing permitted services at a trust representative office established in this state pursuant to Subchapter C, Chapter 187; or

(20) acting as a trustee or custodian approved by the Internal Revenue Service under 26 C.F.R. Section 1.408-2(e) of an individual retirement account described by Section 408(a), Internal Revenue Code of 1986.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.011(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.111, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 69, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 13, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 277 (S.B. 895), Sec. 2.03, eff. September 1, 2023.

Sec. 182.0211. CONFORMANCE WITH SECURITIES ACT. For the purposes of Section 182.021(7), "salesman" includes "agent" and "advisor" includes "investment adviser" or "investment adviser representative."

Added by Acts 2001, 77th Leg., ch. 1091, Sec. 4.03, eff. Sept. 1, 2001.

SUBCHAPTER B. AMENDMENT OF CERTIFICATE; CHANGES IN CAPITAL AND
SURPLUS

Sec. 182.101. AMENDMENT OR RESTATEMENT OF STATE TRUST COMPANY CERTIFICATE OF FORMATION. (a) A state trust company that has been granted a charter under Section 182.006 or a predecessor statute may amend or restate its certificate of formation for any lawful purpose, including the creation of authorized but unissued shares or participation shares in one or more classes or series.

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

(1) the designation of each series and a statement of any variations in the preferences, limitations, and relative rights among series to the extent that the preferences, limitations, and relative rights are to be established in the certificate of formation; and

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

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

(d) Amendment or restatement of the certificate of formation of a state trust company and approval of the board and shareholders or participants must be made or obtained in accordance with the Business Organizations Code, except as otherwise provided by this subtitle or rules adopted under this subtitle. The original and one copy of the certificate of amendment or restated certificate of formation must be filed with the banking commissioner for approval. Unless the submission presents novel or unusual questions, the banking commissioner shall approve or reject the amendment or restatement not later than the 31st day after the date the banking commissioner considers the submission informationally complete and accepted for filing. The banking commissioner may require the submission of additional information

as considered necessary to an informed decision to approve or reject any amendment or restatement of a certificate of formation under this section.

(e) If the banking commissioner finds that the amendment or restatement conforms to law and any conditions imposed by the banking commissioner, and any required filing fee has been paid, the banking commissioner shall:

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

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

(3) deliver a certified copy of the amendment or restatement to the state trust company.

(f) An amendment or restatement, if approved, takes effect on the date of approval, unless the amendment or restatement provides for a different effective date.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 70, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 20, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 21, eff. June 14, 2013.

Sec. 182.102. ESTABLISHING SERIES OF SHARES OR PARTICIPATION SHARES. (a) If the certificate of formation expressly gives the board authority to establish series and determine the preferences, limitations, and relative rights of each series, the board may do so only on compliance with this section and any rules adopted under this chapter.

(b) A series of shares or participation shares may be established in the manner provided by the Business Organizations Code, but the shares or participation shares of the series may not be issued and sold except on compliance with Section 182.103. The state trust company shall file the original and one copy of the statement of action required by the Business Organizations Code

with the banking commissioner.

(c) Unless the submission presents novel or unusual questions, the banking commissioner shall approve or reject the series not later than the 31st day after the date the banking commissioner considers the submission informationally complete and accepted for filing. The banking commissioner may require the submission of additional information as considered necessary to an informed decision.

(d) If the banking commissioner finds that the interests of the clients and creditors of the state trust company will not be adversely affected by the series, that the series otherwise conforms to law and any conditions imposed by the banking commissioner, and that any required filing fee has been paid, the banking commissioner shall:

- (1) endorse the face of the original and copy of the statement with the date of approval and the word "Approved";
- (2) file the original in the department's records; and
- (3) deliver a certified copy of the statement to the state trust company.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 71, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 22, eff. June 14, 2013.

Sec. 182.103. CHANGE IN RESTRICTED CAPITAL. (a) A state trust company may not reduce or increase its restricted capital through dividend, redemption, issuance of shares or participation shares, or otherwise without the prior approval of the banking commissioner, except as permitted by this section or rules adopted under this chapter.

(b) Unless otherwise restricted by rules, prior approval is not required for an increase in restricted capital accomplished through:

- (1) issuance of shares of common stock or their

equivalent in participation shares for cash, or a cash contribution to surplus by shareholders or participants that does not result in issuance of additional common stock or other securities;

(2) declaration and payment of pro rata share dividends as defined by the Business Organizations Code; or

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

(c) Prior approval is not required for:

(1) a decrease in restricted capital caused by losses in excess of undivided profits; or

(2) a change in restricted capital resulting from accounting adjustments required by a transaction approved by the banking commissioner if the accounting adjustments are reasonably disclosed in the submitted application.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. [2754](#)), Sec. 13, eff. September 1, 2007.

Sec. 182.104. CAPITAL NOTES OR DEBENTURES. (a) With the prior written approval of the banking commissioner, a state trust company may at any time through action of its board, and without requiring action of its shareholders or participants, issue and sell its capital notes or debentures. The notes or debentures must be subordinate to the claims of depositors and may be subordinate to other claims, including the claims of other creditors or classes of creditors or the shareholders or participants.

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

(c) Without the prior written approval of the banking commissioner, a state trust company may not pay interest due or principal repayable on outstanding capital notes or debentures when

the state trust company is in hazardous condition or insolvent, as determined by the banking commissioner, or to the extent that payment will cause the state trust company to be in hazardous condition or insolvent.

(d) The amount of any outstanding capital notes or debentures that meet the requirements of this section and that are subordinated to unsecured creditors of the state trust company may be included in equity capital of the state trust company for purposes of determining hazardous condition or insolvency, and for such other purposes provided by rules adopted under this subtitle. Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.105. BOARD DESIGNATION OF CERTIFIED SURPLUS. Periodically the board may vote to designate and record in its minutes the amount of certified surplus. Except to absorb losses in excess of undivided profits and uncertified surplus, certified surplus may not be reduced without the prior written approval of the banking commissioner. Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

SUBCHAPTER C. STATE TRUST COMPANY OFFICES

Sec. 182.201. CONDUCT OF TRUST BUSINESS. A state trust company may engage in the trust business at its home office and at other locations as permitted by this subchapter. Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.202. HOME OFFICE. (a) Each state trust company must have and continuously maintain in this state a home office. The home office must be a location at which the state trust company does business and keeps its corporate books and records. At least one executive officer must maintain an office at the home office.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 244, Sec. 3, eff. September 1, 2007.

(c) A state trust company may change its home office to any location in this state, if the location that is the home office before the change remains an office of the state trust company at which the state trust company does business. To change the location of its home office, the state trust company must file a written notice with the banking commissioner setting forth the name of the state trust company, the street address of its home office before the change, the street address to which the home office is to be changed, and a copy of the resolution adopted by the board authorizing the change. The change of home office takes effect on the 31st day after the date the banking commissioner receives the notice.

(d) A relocation of a state trust company's home office may not be made, and another action that would effect an abandonment of the state trust company's initial home office may not be taken, without the prior written approval of the banking commissioner. The state trust company must establish to the satisfaction of the banking commissioner that the abandonment is consistent with the original determination of public convenience and advantage for the establishment of a state trust company at that location.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 244 (H.B. [2219](#)), Sec. 3, eff. September 1, 2007.

Sec. 182.203. ADDITIONAL OFFICES. (a) A state trust company may establish and maintain additional offices. To establish an additional office, the state trust company must file a written notice with the banking commissioner setting forth the name of the state trust company, the street address of the proposed additional office, a description of the activities proposed to be conducted at the additional office, and a copy of the resolution adopted by the board authorizing the additional office.

(b) A state trust company may not commence business at the additional office before the 31st day after the date the banking commissioner receives the notice, unless the banking commissioner

specifies an earlier or later date. The banking commissioner may specify a later date on a determination that the written notice raises issues that require additional information or additional time for analysis. If a later date is specified, the state trust company may establish the additional office only on prior written approval by the banking commissioner. The banking commissioner may deny permission to establish an additional office of the state trust company if the banking commissioner has a significant supervisory or regulatory concern regarding the proposed additional office, the applicant, or an affiliate.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.012(a), eff. Sept. 1, 2001.

SUBCHAPTER D. MERGER

Sec. 182.301. MERGER AUTHORITY. (a) Two or more trust institutions, corporations, or other entities with the authority to participate in a merger, at least one of which is a state trust company, may adopt and implement a plan of merger in accordance with this section. The merger may not be made without the prior written approval of the banking commissioner if any surviving, new, or acquiring entity that is a party to the merger or created by the terms of the merger is a state trust company or is not a trust institution.

(b) Implementation of the plan of merger by the parties and approval of the board, shareholders, participants, or owners of the parties must be made or obtained as provided by the Business Organizations Code as if the state trust company were a filing entity and all other parties to the merger were foreign entities, except as otherwise provided by rules adopted under this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 72, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 23, eff.

June 14, 2013.

Sec. 182.302. MERGER APPLICATION; GROUNDS FOR APPROVAL.

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

(b) The banking commissioner shall investigate the condition of the merging parties.

(c) The banking commissioner may approve the merger if:

(1) each resulting state trust company:

(A) has complied with the statutes and rules relating to the organization of a state trust company; and

(B) will be solvent and have adequate capitalization for its business and location;

(2) all obligations and liabilities of each trust company that is a party to the merger have been properly discharged or otherwise lawfully assumed or retained by a trust institution or other fiduciary;

(3) each surviving, new, or acquiring person that is not authorized to engage in the trust business will not engage in the trust business and has complied with the laws of this state; and

(4) all conditions imposed by the banking commissioner have been satisfied or otherwise resolved.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.013(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 24, eff. June 14, 2013.

Sec. 182.303. APPROVAL OF BANKING COMMISSIONER. (a) If the banking commissioner approves the merger and finds that all

required filing fees and investigative costs have been paid, the banking commissioner shall:

(1) endorse the face of the original and each copy of the certificate of merger with the date of approval and the word "Approved";

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

(3) deliver a certified copy of the certificate of merger to each surviving, new, or acquiring entity.

(b) A merger is effective on the date of approval, unless the merger agreement provides and the banking commissioner consents to a different effective date.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 25, eff. June 14, 2013.

Sec. 182.304. RIGHTS OF DISSENTERS TO MERGER. A shareholder, participant, or participant-transferee may dissent from the merger to the extent and by following the procedure provided by the Business Organizations Code or rules adopted under this subtitle.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 73, eff. September 1, 2007.

SUBCHAPTER E. PURCHASE OR SALE OF ASSETS

Sec. 182.401. AUTHORITY TO PURCHASE ASSETS. (a) A state trust company may purchase assets from another trust institution, including the right to control accounts established with the trust institution, or assets from another seller, except that the prior written approval of the banking commissioner is required if the purchase price exceeds an amount equal to three times the sum of the trust company's equity capital less intangible assets. The

finance commission by rule may require a state trust company to obtain the prior written approval of the banking commissioner for a transaction not otherwise subject to approval that involves potentially substantial risks to the safety and soundness of the purchasing trust company.

(b) Except as otherwise expressly provided by this section or another statute, the purchase of all or part of the assets of the selling entity does not make the purchasing state trust company responsible for any liability or obligation of the selling entity that the purchasing state trust company does not expressly assume.

(c) If prior approval of the banking commissioner is required under this section, an application in the form required by the banking commissioner must be filed with the banking commissioner. The banking commissioner shall investigate the condition of the purchaser and seller and may require the submission of additional information as considered necessary to make an informed decision.

(d) The banking commissioner shall approve the application to purchase if:

(1) the purchasing state trust company:

(A) has complied with all applicable statutes and rules; and

(B) will be solvent and have sufficient capitalization for its business and location;

(2) all fiduciary obligations and liabilities of each trust institution that is a party to the purchase or sale of assets have been properly discharged or otherwise lawfully assumed or retained by a trust institution or other fiduciary;

(3) all conditions imposed by the banking commissioner have been satisfied or otherwise resolved; and

(4) all fees and costs have been paid.

(e) A purchase subject to prior approval is effective on the date of approval unless the purchase agreement provides for and the banking commissioner consents to a different effective date.

(f) If the purchase transaction includes all or substantially all of the assets of another trust institution or other fiduciary, the acquiring state trust company shall succeed by

operation of law to all of the rights, privileges, and fiduciary obligations of the selling trust institution or other fiduciary under each account included in the assets acquired.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.014(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. [2754](#)), Sec. 14, eff. September 1, 2007.

Sec. 182.402. AUTHORITY TO ACT AS DISBURSING AGENT. (a) The purchasing state trust company may hold the purchase price and any additional funds delivered to it by the selling institution in trust for the selling institution and may act as agent of the selling institution in disbursing those funds in trust by paying the creditors of the selling institution.

(b) If the purchasing state trust company acts under written contract of agency approved by the banking commissioner that specifically names each creditor and the amount to be paid each, and if the agency is limited to the purely ministerial act of paying creditors the amounts due them as determined by the selling institution and reflected in the contract of agency and does not involve discretionary duties or authority other than the identification of the creditors named, the purchasing trust company:

(1) may rely on the contract of agency and the instructions included in it; and

(2) is not responsible for:

(A) any error made by the selling institution in determining its liabilities and creditors to whom the liabilities are due or the amounts due the creditors; or

(B) any preference that results from the payments made under the contract of agency and the instructions included in it.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.403. LIQUIDATION OF SELLING INSTITUTION. If the selling institution is at any time after the sale of assets voluntarily or involuntarily closed for liquidation by a state or federal regulatory agency, the purchasing state trust company shall pay to the receiver of the selling institution the balance of the money held by it in trust for the selling institution and not yet paid to the creditors of the selling institution. Without further action the purchasing state trust company is discharged of all responsibilities to the selling institution, its receiver, or its creditors, shareholders, participants, or participant-transferees.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.404. PAYMENT TO CREDITORS. The purchasing state trust company may pay a creditor of the selling institution the amount to be paid the creditor under the terms of the contract of agency by opening an agency account in the name of the creditor, crediting the account with the amount to be paid the creditor under the terms of the agency contract, and mailing or personally delivering a duplicate ticket evidencing the credit to the creditor at the creditor's address shown in the records of the selling institution. The relationship between the purchasing state trust company and the creditor is that of agent to creditor only to the extent of the credit reflected by the ticket.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.405. SALE OF ASSETS. (a) A state trust company may sell all or any portion of its assets to another trust institution or other buyer, except that the prior written approval of the banking commissioner is required if the sales price exceeds an amount equal to three times the sum of the trust company's equity capital less intangible assets. The finance commission by rule may require a state trust company to obtain the prior written approval of the banking commissioner for a transaction not otherwise subject to approval that involves potentially substantial risks to the

safety and soundness of the selling trust company.

(b) If the prior approval of the banking commissioner for a sale of assets is not required under Subsection (a) and the sale involves the disposition of an established location of the state trust company, the state trust company must provide written notice of the transaction to the banking commissioner at least 30 days before the expected closing date of the transaction.

(c) The board of a state trust company, with the banking commissioner's approval, may cause the state trust company to sell all or substantially all of its assets, including the right to control accounts established with the state trust company, without shareholder or participant approval if:

(1) the banking commissioner finds that the interests of the state trust company's clients, depositors, and creditors are jeopardized because of the hazardous condition of the state trust company and that the sale is in their best interest; and

(2) the Federal Deposit Insurance Corporation or its successor approves the transaction, if the deposits of the state trust company are insured.

(d) A sale under Subsection (c) must include an assumption and promise by the buyer to pay or otherwise discharge:

(1) all of a state trust company's liabilities to clients and depositors;

(2) all of the state trust company's liabilities for salaries of the state trust company's employees incurred before the date of the sale;

(3) obligations incurred by the banking commissioner arising out of the supervision or sale of the state trust company; and

(4) fees and assessments due the department.

(e) This section does not affect the banking commissioner's right to take action under another law. The sale by a state trust company of all or substantially all of its assets with shareholder or participant approval is considered a voluntary dissolution and liquidation and is governed by Subchapter B, Chapter 186.

(f) Each buyer in a transaction described by Subsection (c) that is a trust institution or other fiduciary shall succeed by

operation of law to all of the rights, privileges, and fiduciary obligations of the selling state trust company under each account included in the assets acquired.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.015(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. [2754](#)), Sec. 15, eff. September 1, 2007.

SUBCHAPTER F. EXIT OF STATE TRUST COMPANY OR ENTRY OF ANOTHER TRUST
INSTITUTION

Sec. 182.501. MERGER OR CONVERSION OF STATE TRUST COMPANY INTO ANOTHER TRUST INSTITUTION EXERCISING FIDUCIARY POWERS. (a) Subject to Chapter [187](#), a state trust company may act as necessary and to the extent permitted by the laws of the United States, this state, another state, or another country to merge or convert into another form of trust institution.

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

(c) The state trust company does not cease to be a state trust company subject to the supervision of the banking commissioner unless:

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

(2) the state trust company has filed with the banking commissioner:

(A) a copy of the application filed with the successor regulatory authority, including a copy of each contract

evidencing or implementing the merger or conversion, or other documents sufficient to show compliance with applicable law; and

(B) a certified copy of all minutes of board meetings and shareholder or participant meetings at which action was taken regarding the merger or conversion;

(3) the banking commissioner determines that:

(A) all accounts and liabilities of the state trust company are fully discharged, assumed, or otherwise retained by the successor trust institution;

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

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

(4) the state trust company has received a certificate of authority to do business as the successor trust institution.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.016(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 74, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 16, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 26, eff. June 14, 2013.

Sec. 182.502. CONVERSION OF TRUST INSTITUTION INTO STATE TRUST COMPANY. (a) A trust institution may apply to the banking commissioner for conversion into a state trust company on a form prescribed by the banking commissioner and accompanied by any required fee if the trust institution follows the procedures prescribed by the laws of the United States, this state, another state, or another country governing the exit of the trust institution for the purpose of conversion into a state trust company from the regulatory system applicable before the conversion. A trust association or limited trust association may convert its organizational form under this section.

(b) A trust institution applying to convert into a state trust company may receive a certificate of authority to do business as a state trust company if the banking commissioner finds that:

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

(2) the trust institution has adequate capitalization for a state trust company to act as a fiduciary at the same locations as the trust institution is acting as a fiduciary before the conversion;

(3) the trust institution can be expected to operate profitably after the conversion;

(4) the officers and directors of the trust institution as a group have sufficient fiduciary experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the trust institution will operate as a state trust company in compliance with law; and

(5) each principal shareholder has sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the trust institution will be free from improper or unlawful influence or interference with respect to the trust institution's operation as a state trust company in compliance with law.

(c) The banking commissioner may:

(1) request additional information considered necessary to make an informed decision under this section;

(2) perform an examination of the converting trust institution at the expense of the converting trust institution; and

(3) require that examination fees be paid before a certificate of authority is issued.

(d) In connection with the application, the converting trust institution must:

(1) submit a statement of the law governing the exit of the trust institution from the regulatory system applicable before the conversion and the terms of the transition into a state trust company; and

(2) demonstrate that all applicable law has been fully

satisfied.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.016(a), eff. Sept. 1, 2001.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 98 (S.B. [1646](#)), Sec. 1, eff. May 19, 2023.