

FINANCE CODE

TITLE 3. FINANCIAL INSTITUTIONS AND BUSINESSES

SUBTITLE F. TRUST COMPANIES

CHAPTER 184. INVESTMENTS, LOANS, AND DEPOSITS

SUBCHAPTER A. ACQUISITION AND OWNERSHIP OF TRUST COMPANY FACILITIES
AND OTHER REAL PROPERTY

Sec. 184.001. DEFINITION. In this subchapter, "state trust company facility" means real property, including an improvement, that a state trust company owns or leases, to the extent the lease or the leasehold improvement is capitalized, for the purpose of:

(1) providing space for state trust company employees to perform their duties and for state trust company employees and customers to park;

(2) conducting trust business, including meeting the reasonable needs and convenience of the public and the state trust company's clients, computer operations, document and other item processing, maintenance, and record retention and storage;

(3) holding, improving, and occupying as an incident to future expansion of the state trust company's facilities; or

(4) conducting another activity authorized by rules adopted under this subtitle.

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

Sec. 184.002. INVESTMENT IN STATE TRUST COMPANY FACILITIES.

(a) Without the prior written approval of the banking commissioner, a state trust company may not directly or indirectly invest an amount in excess of the company's restricted capital in state trust company facilities, furniture, fixtures, and equipment. Except as otherwise provided by rules adopted under this subtitle, in computing the limitation provided by this subsection a state trust company:

(1) shall include:

(A) its direct investment in state trust company facilities;

(B) an investment in equity or investment securities of a company holding title to a facility used by the state trust company for the purposes specified by Section 184.001;

(C) a loan made by the state trust company to or on the security of equity or investment securities issued by a company holding title to a facility used by the state trust company; and

(D) any indebtedness incurred on state trust company facilities by a company:

(i) that holds title to the facility;

(ii) that is an affiliate of the state trust company; and

(iii) in which the state trust company is invested in the manner described by Paragraph (B) or (C); and

(2) may exclude an amount included under Subdivisions (1)(B)-(D) to the extent any lease of a facility from the company holding title to the facility is capitalized on the books of the state trust company.

(b) Real property described by Subsection 184.001(3) and not improved and occupied by the state trust company ceases to be a state trust company facility on the third anniversary of the date of its acquisition unless the banking commissioner on application grants written approval to further delay in the improvement and occupation of the property by the state trust company.

(c) A state trust company shall comply with regulatory accounting principles in accounting for its investment in and depreciation of trust company facilities, furniture, fixtures, and equipment.

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. 940 (H.B. 1664), Sec. 14, eff. June 14, 2013.

Acts 2023, 88th Leg., R.S., Ch. 98 (S.B. 1646), Sec. 2, eff. May 19, 2023.

Sec. 184.003. OTHER REAL PROPERTY. (a) A state trust

company may not invest its restricted capital in real property except:

(1) as permitted by this subtitle or rules adopted under this subtitle;

(2) with the prior written approval of the banking commissioner; or

(3) as necessary to avoid or minimize a loss on a loan or investment previously made in good faith.

(b) With the prior written approval of the banking commissioner, a state trust company may:

(1) exchange real property for other real property or personal property;

(2) invest additional money in or improve real property acquired under this subsection or Subsection (a); or

(3) acquire additional real property to avoid or minimize loss on real property acquired as permitted by Subsection (a).

(c) A state trust company shall dispose of any real property subject to Subsection (a) not later than the fifth anniversary of the date the real property:

(1) was acquired, except as otherwise provided by rules adopted under this subtitle;

(2) ceases to be used as a state trust company facility; or

(3) ceases to be a state trust company facility as provided by Section [184.002\(b\)](#).

(d) The banking commissioner on application may grant one or more extensions of time for disposing of real property under Subsection (c) if the banking commissioner determines that:

(1) the state trust company has made a good faith effort to dispose of the real property; or

(2) disposal of the real property would be detrimental to the state trust company.

(e) Subject to the exercise of prudent judgment, a state trust company may invest its secondary capital in real property. The factors to be considered by a state trust company in exercise of prudent judgment include the factors contained in Section

184.101(e).

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

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 8.001, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 98 (S.B. 1646), Sec. 3, eff. May 19, 2023.

SUBCHAPTER B. INVESTMENTS

Sec. 184.101. SECURITIES. (a) A state trust company may invest its restricted capital in any type or character of equity or investment securities under the limitations provided by this section.

(b) Unless the banking commissioner in writing approves maintenance of a lesser amount, a state trust company must invest and maintain an amount equal to at least 50 percent of the state trust company's restricted capital under Section 182.008 in investment securities that are readily marketable and can be converted to cash within four business days.

(c) Subject to Subsection (d), the total investment of its restricted capital in equity and investment securities of any one issuer, obligor, or maker, and the total investment of its restricted capital in mutual funds, held by the state trust company for its own account, may not exceed an amount equal to 15 percent of the state trust company's restricted capital. The banking commissioner may authorize investments in excess of this limitation on written application if the banking commissioner determines that:

(1) the excess investment is not prohibited by other applicable law; and

(2) the safety and soundness of the requesting state trust company is not adversely affected.

(d) Notwithstanding Subsection (c), a state trust company may invest its restricted capital, without limit subject to the exercise of prudent judgment, in:

(1) bonds and other legally created general

obligations of a state, an agency or political subdivision of a state, the United States, or an agency or instrumentality of the United States;

(2) obligations that this state, an agency or political subdivision of this state, the United States, or an agency or instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee;

(3) securities that are offered and sold under 15 U.S.C. Section 77d(5);

(4) mortgage related securities or small business related securities, as those terms are defined by 15 U.S.C. Section 78c(a);

(5) mortgages, obligations, or other securities that are or ever have been sold by the Federal Home Loan Mortgage Corporation under Section 305 or 306, Federal Home Loan Mortgage Corporation Act (12 U.S.C. Sections 1434 and 1455);

(6) obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association;

(7) obligations issued by the Federal Agricultural Mortgage Corporation, the Federal Farm Credit Banks Funding Corporation, or a Federal Home Loan Bank;

(8) obligations of the Federal Financing Bank or the Environmental Financing Authority;

(9) obligations or other instruments or securities of the Student Loan Marketing Association; or

(10) qualified Canadian government obligations, as defined by 12 U.S.C. Section 24.

(e) In the exercise of prudent judgment, a state trust company shall, at a minimum:

(1) exercise care and caution to make and implement investment and management decisions for the entire investment portfolio, taking into consideration the safety and soundness of the state trust company;

(2) pursue an overall investment strategy to enable management to make appropriate present and future decisions; and

(3) consider, to the extent relevant to the decision

or action:

(A) the size, diversification, and liquidity of its corporate assets;

(B) the general economic conditions;

(C) the possible effect of inflation or deflation;

(D) the expected tax consequences of the investment decisions or strategies;

(E) the role that each investment or course of action plays within the investment portfolio; and

(F) the expected total return of the portfolio.

(f) A state trust company may invest its secondary capital in any type or character of equity or investment securities subject to the exercise of prudent judgment according to the standards provided by Subsection (e).

(g) The finance commission may adopt rules to administer and carry out this section, including rules to:

(1) establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of investment; or

(2) limit or expand investment authority for state trust companies for particular classes or categories of securities or other property.

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. 23, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. 875), Sec. 10, eff. September 1, 2015.

Sec. 184.102. TRANSACTIONS IN STATE TRUST COMPANY SHARES OR PARTICIPATION SHARES. Except with the prior written approval of the banking commissioner:

(1) a state trust company may not acquire its own shares or participation shares unless the amount of its undivided profits is sufficient to fully absorb the acquisition of the shares or participation shares under regulatory accounting principles;

and

(2) a state trust company may not acquire a lien on its own shares or participation shares unless the amount of indebtedness secured is less than the amount of the state trust company's undivided profits.

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

Sec. 184.103. STATE TRUST COMPANY SUBSIDIARIES. (a) Except as otherwise provided by this subtitle or rules adopted under this subtitle, and subject to the exercise of prudent judgment, a state trust company may invest its secondary capital to acquire or establish one or more subsidiaries to conduct any activity that may lawfully be conducted through the form of organization chosen for the subsidiary. The factors to be considered by a state trust company in exercise of prudent judgment include the factors contained in Section [184.101\(e\)](#).

(b) A state trust company that intends to acquire, establish, or perform new activities through a subsidiary shall submit a letter to the banking commissioner describing in detail the proposed activities of the subsidiary.

(c) The state trust company may acquire or establish a subsidiary or begin performing new activities in an existing subsidiary on the 31st day after the date the banking commissioner receives the state trust company's letter, unless the banking commissioner specifies an earlier or later date. The banking commissioner may extend the 30-day period on a determination that the state trust company's letter raises issues that require additional information or additional time for analysis. If the period is extended, the state trust company may acquire or establish the subsidiary, or perform new activities in an existing subsidiary, only on prior written approval of the banking commissioner.

(d) A subsidiary of a state trust company is subject to regulation by the banking commissioner to the extent provided by this subtitle or rules adopted under this section. In the absence of limiting rules, the banking commissioner may regulate a

subsidiary as if it were a state trust company.

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. 24, eff. Sept. 1, 2001.

Sec. 184.104. OTHER INVESTMENT PROVISIONS. (a) Without the prior written approval of the banking commissioner, a state trust company may not make any investment of its secondary capital in any investment that incurs or may incur, under regulatory accounting principles, a liability or contingent liability for the state trust company.

(b) The banking commissioner may, on a case-by-case basis, require a state trust company to dispose of any investment of its secondary capital, if the banking commissioner finds that the divestiture of the asset is necessary to protect the safety and soundness of the state trust company. The banking commissioner in the exercise of discretion under this subsection shall consider safety and soundness factors, including those contained in Section [182.008\(b\)](#). The proposed effective date of an order requiring a state trust company to dispose of an asset must be stated in the order and must be on or after the 21st day after the date the proposed 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 proposed order, the order becomes effective and is final and nonappealable.

(c) Subject to Subsections (a) and (b), to Section [184.105](#), and to the exercise of prudent judgment, a state trust company may invest its secondary capital in any type or character of investment for the purpose of generating income or profit. The factors to be considered by a state trust company in exercise of prudent judgment include the factors contained in Section [184.101\(e\)](#).

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. 25, eff. Sept. 1, 2001.

Sec. 184.105. ENGAGING IN COMMERCE PROHIBITED. (a) Except as otherwise provided by this subtitle or rules adopted under this

subtitle, a state trust company may not invest its funds in trade or commerce by buying, selling, or otherwise dealing goods or by owning or operating a business not part of the state trust business, except as necessary to fulfill a fiduciary obligation to a client.

(b) Under this section, engaging in an approved financial activity or an activity incidental or complementary to a financial activity, whether as principal or agent, is not considered to be engaging in commerce.

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. 26, eff. Sept. 1, 2001.

SUBCHAPTER C. LOANS

Sec. 184.201. LENDING LIMITS. (a) A state trust company's total outstanding loans and extensions of credit to a person other than an insider may not exceed an amount equal to 15 percent of the state trust company's restricted capital.

(b) The aggregate loans and extensions of credit outstanding at any time to insiders of the state trust company may not exceed an amount equal to 15 percent of the state trust company's restricted capital. All covered transactions between an insider and a state trust company must be engaged in only on terms and under circumstances, including credit standards, that are substantially the same as those for comparable transactions with a person other than an insider.

(c) The finance commission may adopt rules to administer this section, including rules to:

(1) establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of loans or extensions of credit; and

(2) establish collective lending and investment limits.

(d) The banking commissioner may determine whether a loan or extension of credit putatively made to a person will be attributed to another person for purposes of this section.

(e) A state trust company may not lend trust deposits,

except that a trustee may make a loan to a beneficiary of the trust if the loan is expressly authorized or directed by the instrument or transaction establishing the trust.

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

Sec. 184.202. VIOLATION OF LENDING LIMIT. (a) An officer, director, manager, managing participant, or employee of a state trust company who approves or participates in the approval of a loan with actual knowledge that the loan violates Section 184.201 is jointly and severally liable to the state trust company for the lesser of the amount by which the loan exceeded applicable lending limits or the state trust company's actual loss. The person remains liable for that amount until the loan and all prior indebtedness of the borrower to the state trust company have been fully repaid.

(b) The state trust company may initiate a proceeding to collect an amount due under this section at any time before the date the borrower defaults on the subject loan or any prior indebtedness or before the fourth anniversary of that date.

(c) A person who is liable for and pays amounts to the state trust company under this section is entitled to an assignment of the state trust company's claim against the borrower to the extent of the payments.

(d) For purposes of this section, an officer, director, manager, managing participant, or employee of a state trust company is presumed to know the amount of the state trust company's lending limit under Section 184.201 and the amount of the borrower's aggregate outstanding indebtedness to the state trust company immediately before a new loan or extension of credit to that borrower.

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

Sec. 184.203. LEASE FINANCING TRANSACTION. (a) Subject to rules adopted under this subtitle, a state trust company may become the owner and lessor of tangible personal property for lease financing transactions on a net lease basis on the specific request

and for the use of a client. Without the written approval of the banking commissioner to continue holding property acquired for leasing purposes under this subsection, the state trust company may not hold the property more than six months after the date of expiration of the original or any extended or renewed lease period agreed to by the client for whom the property was acquired or by a subsequent lessee.

(b) A rental payment received by the state trust company in a lease financing transaction under this section is considered to be rent and not interest or compensation for the use, forbearance, or detention of money. However, a lease financing transaction is considered to be a loan or extension of credit for purposes of Sections [184.201](#) and [184.202](#).

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

Sec. 184.204. GENERAL BANKING PRIVILEGES NOT CONFERRED. This subchapter does not confer general banking privileges on a state trust company.

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

SUBCHAPTER D. TRUST DEPOSITS

Sec. 184.301. TRUST DEPOSITS. (a) A state trust company may deposit trust funds with itself as an investment if:

(1) the deposit is authorized by the settlor or beneficiary;

(2) the state trust company maintains as security for the deposit a separate fund of securities, legal for trust investments, under control of a federal reserve bank or a clearing corporation, as defined by Section [8.102](#), Business & Commerce Code, within or outside this state;

(3) the total market value of the security is at all times at least equal to the amount of the deposit; and

(4) the separate fund is designated as a separate fund.

(b) A state trust company may make periodic withdrawals from or additions to a securities fund required by Subsection (a) as long as the required value is maintained. Income from the securities in the fund belongs to the state trust company.

(c) Security for a deposit under this section is not required for a deposit under Subsection (a) to the extent the deposit is insured by the Federal Deposit Insurance Corporation or its successor.

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

Sec. 184.302. GENERAL BANKING PRIVILEGES NOT CONFERRED. This subchapter does not confer general banking privileges on a state trust company.

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

SUBCHAPTER E. LIABILITIES AND PLEDGE OF ASSETS

Sec. 184.401. BORROWING LIMIT. Except with the prior written approval of the banking commissioner, a state trust company may not have outstanding liabilities, excluding trust deposit liabilities arising under Section 184.301, that exceed an amount equal to five times its restricted capital.

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

Sec. 184.402. PLEDGE OF ASSETS. (a) A state trust company may not pledge or create a lien on any of its assets except to secure:

- (1) the repayment of money borrowed;
- (2) trust deposits as specifically authorized or required by:
 - (A) Section 184.301;
 - (B) Title 9, Property Code; or
 - (C) rules adopted under this chapter; or
- (3) deposits made by:

- (A) the United States;
- (B) a state, county, or municipality; or
- (C) an agency of the United States or a state, county, or municipality.

(b) An act, deed, conveyance, pledge, or contract in violation of this section is void.

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