

FINANCE CODE

TITLE 3. FINANCIAL INSTITUTIONS AND BUSINESSES

SUBTITLE F. TRUST COMPANIES

CHAPTER 185. ENFORCEMENT ACTIONS

SUBCHAPTER A. ENFORCEMENT ORDERS

Sec. 185.0001. APPLICABILITY TO STATE TRUST COMPANY SUBSIDIARIES. This subchapter applies to a subsidiary of a state trust company, a present or former officer, director, manager, managing participant, or employee of a subsidiary, or a controlling shareholder or other person participating in the affairs of a subsidiary in the same manner as the subchapter applies to a state trust company, a present or former officer, director, manager, managing participant, or employee of a state trust company, or a controlling shareholder or other person participating in the affairs of a state trust company.

Added by Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. 3555), Sec. 9, eff. September 1, 2015.

Sec. 185.001. DETERMINATION LETTER. (a) If the banking commissioner determines from examination or other credible evidence that a state trust company is in a condition that may warrant the issuance of an enforcement order under this chapter, the banking commissioner may notify the state trust company in writing of the determination, the requirements the state trust company must satisfy to abate the determination, and the time in which the requirements must be satisfied to avert further administrative action. The determination letter must be delivered by personal delivery or by registered or certified mail, return receipt requested.

(b) The determination letter may be issued in connection with the issuance of a cease and desist, removal, or prohibition order under this subchapter or an order of supervision or conservatorship under Subchapter B.

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

Sec. 185.002. CEASE AND DESIST ORDER. (a) The banking commissioner has grounds to issue a cease and desist order to an officer, employee, director, manager, or managing participant of a state trust company, or the state trust company itself acting through an authorized person, if the banking commissioner determines from examination or other credible evidence that the state trust company or person directly or indirectly has:

(1) violated this subtitle or another applicable law or rule;

(2) engaged in a breach of trust or other fiduciary duty;

(3) refused to submit to examination or examination under oath;

(4) conducted business in an unsafe or unsound manner; or

(5) violated a condition of the state trust company's charter or an agreement between the state trust company or the person and the banking commissioner or the department.

(b) If the banking commissioner has grounds for action under Subsection (a) and finds that an order to cease and desist from a violation or other conduct described by Subsection (a) appears to be necessary and in the best interest of a state trust company involved and its clients, creditors, and shareholders or participants, the banking commissioner may serve a proposed cease and desist order on the state trust company and each person who committed or participated in the violation. The order must:

(1) be delivered by personal delivery or by registered or certified mail, return receipt requested;

(2) state with reasonable certainty the grounds for the order; and

(3) state the effective date of the order, which may not be earlier than the 21st day after the date the order is mailed or delivered.

(b-1) A proposed cease and desist order may require an officer, employee, director, manager, or managing participant of a state trust company, or the state trust company itself acting

through an authorized person, to cease or desist from a violation or other practice or to take affirmative action to correct the conditions resulting from a violation or other practice, including the payment of restitution or other action that the banking commissioner determines is appropriate.

(c) The order takes effect if the state trust company or person against whom the order is directed does not request a hearing in writing before the effective date. After taking effect, the order is final and nonappealable as to that state trust company or person.

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. 422 (H.B. 3555), Sec. 10, eff. September 1, 2015.

Sec. 185.003. REMOVAL OR PROHIBITION ORDER. (a) The banking commissioner has grounds to remove or prohibit a present or former officer, director, manager, managing participant, or employee of a state trust company from office or employment in, or prohibit a controlling shareholder or participant or other person participating in the affairs of a state trust company from further participation in the affairs of, the state trust company or any other entity chartered, registered, permitted, or licensed by the banking commissioner if the banking commissioner determines from examination or other credible evidence that:

(1) the person:

(A) intentionally committed or participated in the commission of an act described by Section 185.002(a) with regard to the affairs of a financial institution, as defined by Section 201.101;

(B) violated a final cease and desist order issued by a state or federal regulatory agency against the person or an entity in which the person is or was an officer, director, or employee; or

(C) made, or caused to be made, false entries in the records of a financial institution;

(2) because of this action by the person:

(A) the financial institution has suffered or will probably suffer financial loss or expense, or other damage;

(B) the interests of the clients, depositors, creditors, or shareholders of the financial institution have been or could be prejudiced; or

(C) the person has received financial gain or other benefit by reason of the action, or likely would have if the action had not been discovered; and

(3) that action by the person:

(A) involves personal dishonesty on the part of the person; or

(B) demonstrates wilful or continuing disregard for the safety or soundness of the financial institution.

(b) If the banking commissioner has grounds for action under Subsection (a) and finds that a removal or prohibition order appears to be necessary and in the best interest of the public, the banking commissioner may serve a proposed removal or prohibition order, as appropriate, on an officer, employee, director, manager or managing participant, controlling shareholder or participant, or other person alleged to have committed or participated in the violation or other conduct described by Section 185.002(a). The order must:

(1) be delivered by personal delivery or by registered or certified mail, return receipt requested;

(2) state with reasonable certainty the grounds for removal or prohibition;

(3) state the effective date of the order, which may not be before the 21st day after the date the proposed order is delivered or mailed; and

(4) state the duration of the order, including whether the duration of the order is perpetual.

(b-1) The banking commissioner may make a removal or prohibition order perpetual or effective for a specific period of time, may probate the order, or may impose other conditions on the order.

(c) The order takes effect if the person against whom the

order is directed does not request a hearing in writing before the effective date. After taking effect the order is final and nonappealable as to that person.

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. 6.017(a), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. [1165](#)), Sec. 9, eff. May 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. [1664](#)), Sec. 15, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. [3555](#)), Sec. 11, eff. September 1, 2015.

Sec. 185.0035. REMOVAL OR PROHIBITION ORDERS IN RESPONSE TO CERTAIN CRIMINAL OFFENSES. (a) For purposes of this section, a person is considered to have been finally convicted of an offense if the person's case is not subject to further appellate review and:

- (1) a sentence was imposed on the person;
- (2) the person received probation or community supervision, including deferred adjudication community supervision; or
- (3) the court deferred final disposition of the person's case.

(b) The banking commissioner has grounds to remove or prohibit a present or former officer, director, manager, managing participant, or employee of a state trust company from office or employment in, or prohibit a controlling shareholder or participant or other person participating in the affairs of a state trust company from further participation in the affairs of, the state trust company or any other entity chartered, registered, permitted, or licensed by the banking commissioner if the person has been finally convicted of a felony offense involving:

- (1) a financial institution, as defined by Section [201.101](#);
- (2) dishonesty; or
- (3) breach of trust.

(c) If the banking commissioner has grounds for action under Subsection (b), the banking commissioner may serve a removal or prohibition order, as appropriate, on the person who has been finally convicted of a felony offense. The banking commissioner shall also serve a copy of the order on any state trust company that the person is affiliated with at the time of service of the order.

(d) An order issued under this section becomes effective immediately on service and continues in effect unless the order is:

- (1) stayed or terminated by the banking commissioner;
- (2) set aside by the banking commissioner after a hearing; or
- (3) stayed or vacated on appeal.

(e) Not later than the 30th day after the date an order is served under this section, the person against whom the order is issued may request in writing a hearing before the banking commissioner to show that the person's continued service to a state trust company or participation in the affairs of a state trust company does not, or is unlikely to, threaten the interests of the clients, depositors, creditors, or shareholders of the state trust company or the public confidence in the state trust company.

(f) Not later than the 30th day after the date a request for a hearing is received under this section, the banking commissioner shall hold the hearing, unless the party requesting the hearing requests a later date. At the hearing, the party requesting the hearing has the burden of proof.

(g) After the hearing, the banking commissioner may affirm, modify, or set aside, in whole or in part, the order. An order affirming or modifying the order is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections [181.202](#) and [181.204](#).

Added by Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. [3555](#)), Sec. 12, eff. September 1, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. [614](#)), Sec. 24, eff. September 1, 2019.

Sec. 185.004. HEARING ON PROPOSED ORDER. (a) A requested

hearing on a proposed order shall be held not later than the 30th day after the date the first request for a hearing on the order was received by the banking commissioner unless the parties agree to a later hearing date. Not later than the 11th day before the date of the hearing, each party shall be given written notice by personal delivery or by registered or certified mail, return receipt requested, of the date set by the banking commissioner for the hearing. At the hearing, the banking commissioner has the burden of proof, and each person against whom the order is directed may cross-examine witnesses and present evidence to show why the order should not be issued.

(b) After the hearing, the banking commissioner shall issue or decline to issue the order. The order may be modified as necessary to conform to the findings at the hearing and to require the board to take necessary affirmative action to correct the conditions cited in the order.

(c) An order issued under this section is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections [181.202](#) and [181.204](#).

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. [614](#)), Sec. 25, eff. September 1, 2019.

Sec. 185.005. EMERGENCY ORDER. (a) If the banking commissioner believes that immediate action is needed to prevent immediate and irreparable harm to the state trust company and its clients, creditors, and shareholders or participants, the banking commissioner may issue one or more cease and desist, removal, or prohibition orders as emergency orders to become effective immediately on service without prior notice or hearing. Service must be by personal delivery or by registered or certified mail, return receipt requested.

(b) In each emergency order the banking commissioner shall notify the state trust company and any person against whom the emergency order is directed of:

- (1) the specific conduct requiring the order;
- (2) the citation of each statute or rule alleged to have been violated;
- (3) the immediate and irreparable harm alleged to be threatened;
- (4) the duration of the order, including whether the duration of the order is perpetual; and
- (5) the right to a hearing.

(c) Unless a person against whom the order is directed requests a hearing in writing before the 11th day after the date the order is served on the person, the order is final and nonappealable as to that person.

(d) A hearing requested under Subsection (c) must be:

- (1) given priority over all other matters pending before the banking commissioner; and
- (2) held not later than the 20th day after the date the hearing is requested unless the parties agree to a later hearing date.

(e) After the hearing, the banking commissioner may affirm, modify, or set aside in whole or part the emergency order. An order affirming or modifying the order is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections [181.202](#) and [181.204](#).

(f) An emergency order continues in effect unless the order is stayed by the banking commissioner. The banking commissioner may impose any condition before granting a stay of the emergency order.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. [1165](#)), Sec. 10, eff. May 28, 2011.

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. [614](#)), Sec. 26, eff. September 1, 2019.

Sec. 185.006. COPY OF LETTER OR ORDER IN STATE TRUST COMPANY RECORDS. A copy of any determination letter, proposed order,



emergency order, or final order issued by the banking commissioner under this subchapter shall be immediately brought to the attention of the board of the affected state trust company, regardless of whether the state trust company is a party, and filed in the minutes of the board. Each director, manager, or managing participant shall immediately certify to the banking commissioner in writing that the certifying person has read and understood the determination letter, proposed order, emergency order, or final order. The required certification may not be considered an admission of a person in a subsequent legal or administrative proceeding.

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

Sec. 185.007. EFFECT OF FINAL REMOVAL OR PROHIBITION ORDER.

(a) Except as provided by other law, without the prior written approval of the banking commissioner, a person subject to a final and enforceable removal or prohibition order issued by the banking commissioner, or by another state, federal, or foreign financial institution regulatory agency, may not:

(1) serve as a director, officer, or employee of a state trust company, state bank, or holding company of a state bank, or as a director, officer, or employee with financial responsibility of any other entity chartered, registered, permitted, or licensed by the banking commissioner under the laws of this state while the order is in effect;

(2) directly or indirectly participate in any manner in the management of such an entity;

(3) directly or indirectly vote for a director of such an entity; or

(4) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote a proxy, consent, or authorization with respect to voting rights in such an entity.

(b) The person subject to the order remains entitled to receive dividends or a share of profits, return of contribution, or other distributive benefit from an entity identified in Subsection (a)(1) with respect to voting securities in the entity owned by the

person.

(c) If voting securities of an entity identified in Subsection (a)(1) cannot be voted under this section, the voting securities are considered to be authorized but unissued for purposes of determining the procedures for and results of the affected vote.

(d) Participants of a limited trust association in which a participant has been finally removed or prohibited from participation in the state trust company's affairs under this subchapter shall elect a board of managers.

(e) This section and Section 185.008 do not prohibit a removal or prohibition order that has indefinite duration or that by its terms is perpetual.

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. 3.10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 6.018(a), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. 1165), Sec. 11, eff. May 28, 2011.

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 15, eff. September 1, 2017.

Sec. 185.0071. APPLICATION FOR RELEASE FROM FINAL REMOVAL OR PROHIBITION ORDER. (a) After the expiration of 10 years from the date of issuance, a person who is subject to a prohibition or removal order issued under this subchapter, regardless of the order's stated duration or date of issuance, may apply to the banking commissioner to be released from the order.

(b) The application must be made under oath and in the form required by the banking commissioner. The application must be accompanied by any required fees.

(c) The banking commissioner, in the exercise of discretion, may approve or deny an application filed under this section.

(d) The banking commissioner's decision under Subsection (c) is final and not appealable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. [1165](#)), Sec. 12, eff. May 28, 2011.

Sec. 185.008. LIMITATION ON ACTION. The banking commissioner may not initiate an enforcement action under this subchapter later than the fifth anniversary of the date the banking commissioner discovered or reasonably should have discovered the conduct involved.

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

Sec. 185.009. ENFORCEMENT BY COMMISSIONER. (a) If the banking commissioner reasonably believes that a state trust company or other person has violated any of the following, the banking commissioner may take any action authorized under Subsection (a-1):

(1) this subtitle or rules enacted under this subtitle and, as a result of that violation, exposed or could have exposed the state trust company or its clients, creditors, shareholders, or participants to harm;

(2) other applicable law of this state and, as a result of that violation, exposed or could have exposed the state trust company or its clients, creditors, shareholders, or participants to harm; or

(3) a final order issued by the banking commissioner.

(a-1) The banking commissioner may:

(1) initiate administrative penalty proceedings against the state trust company or other person, as applicable, in accordance with Sections [185.010](#) and [185.011](#);

(2) refer the matter to the attorney general for enforcement by injunction or other available remedy; or

(3) pursue any other action the banking commissioner considers appropriate under applicable law.

(b) If the attorney general prevails in an action brought under Subsection (a-1)(2), the attorney general is entitled to recover reasonable attorney's fees from a state trust company or person committing the violation.

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

1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. [1165](#)), Sec. 13, eff. May 28, 2011.

Sec. 185.010. ADMINISTRATIVE PENALTY. (a) The banking commissioner may initiate a proceeding for an administrative penalty against a state trust company or other person by serving on the state trust company or other person, as applicable, notice of the time and place of a hearing on the penalty. The hearing may not be held earlier than the 20th day after the date the notice is served. The notice must:

(1) be served by personal delivery or by registered or certified mail, return receipt requested;

(2) contain a statement of the conduct alleged to constitute a violation; and

(3) if the alleged violation is described by Section [185.009](#)(a)(1) or (2), identify corrective action that the state trust company or other person must take to avoid or reduce the amount of a penalty that would otherwise be imposed under this section.

(b) In determining the amount of any penalty to be imposed, the banking commissioner shall consider the following factors:

(1) the financial resources of the state trust company or other person;

(2) the good faith of the state trust company or other person, including any corrective action taken;

(3) the gravity of the violation;

(4) the history of previous violations;

(5) an offset of the amount of the penalty by the amount of any penalty imposed by another state or federal agency for the same conduct; and

(6) any other matter that justice may require.

(c) If the banking commissioner determines after the hearing that the alleged conduct occurred and that the conduct constitutes a violation, the banking commissioner may impose an administrative penalty against a state trust company or other

person, as applicable, in an amount:

(1) if imposed against a state trust company, not more than \$10,000 for each violation for each day the violation continues, except that the maximum administrative penalty that may be imposed is the lesser of \$500,000 or one percent of the state trust company's assets; or

(2) if imposed against a person other than a state trust company, not more than \$5,000 for each violation for each day the violation continues, except that the maximum administrative penalty that may be imposed is \$250,000.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. [1165](#)), Sec. 14, eff. May 28, 2011.

Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. [1823](#)), Sec. 10, eff. September 1, 2019.

Sec. 185.011. PAYMENT OR APPEAL OF ADMINISTRATIVE PENALTY.

(a) When a penalty order under Section [185.010](#) becomes final, a state trust company or other person, as applicable, shall pay the penalty or appeal by filing a petition for judicial review.

(b) The petition for judicial review stays the penalty order during the period preceding the decision of the court. If the court sustains the order, the court shall order the state trust company or other person, as applicable, to pay the full amount of the penalty or a lower amount determined by the court. If the court does not sustain the order, a penalty is not owed. If the final judgment of the court requires payment of a penalty, interest accrues on the penalty, at the rate charged on loans to depository institutions by the Federal Reserve Bank of New York, beginning on the date the judgment is final and ending on the date the penalty and interest are paid.

(c) If the state trust company or other person, as applicable, does not pay the penalty imposed under a final and nonappealable penalty order, the banking commissioner shall refer the matter to the attorney general for enforcement. The attorney

general is entitled to recover reasonable attorney's fees from the state trust company or other person, as applicable, if the attorney general prevails in judicial action necessary for collection of the penalty.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. 1165), Sec. 15, eff. May 28, 2011.

Sec. 185.012. CONFIDENTIALITY OF RECORDS. A copy of a notice, correspondence, transcript, pleading, or other document in the records of the department relating to an order issued under this subchapter is confidential and may be released only as provided by Subchapter D, Chapter 181, except that the banking commissioner periodically shall publish all final removal and prohibition orders. The banking commissioner may release a final cease and desist order, a final order imposing an administrative penalty, or information regarding the existence of any of those orders to the public if the banking commissioner concludes that the release would enhance effective enforcement of the order.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. 1165), Sec. 16, eff. May 28, 2011.

Sec. 185.013. COLLECTION OF FEES. The banking commissioner may sue to enforce the collection of a fee owed to the department under a law administered by the banking commissioner. In the suit a certificate by the banking commissioner showing the delinquency is prima facie evidence of:

(1) the levy of the fee or the delinquency of the stated fee amount; and

(2) compliance by the banking commissioner with the law relating to the computation and levy of the fee.

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

1999.

SUBCHAPTER B. SUPERVISION AND CONSERVATORSHIP

Sec. 185.1001. APPLICABILITY TO STATE TRUST COMPANY SUBSIDIARIES. This subchapter applies to a subsidiary of a state trust company, a present or former officer, director, manager, managing participant, or employee of a subsidiary, or a controlling shareholder or other person participating in the affairs of a subsidiary in the same manner as the subchapter applies to a state trust company, a present or former officer, director, manager, managing participant, or employee of a state trust company, or a controlling shareholder or other person participating in the affairs of a state trust company.

Added by Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. 3555), Sec. 13, eff. September 1, 2015.

Sec. 185.101. ORDER OF SUPERVISION. (a) The banking commissioner by order may appoint a supervisor over a state trust company if the banking commissioner determines from examination or other credible evidence that the state trust company is in hazardous condition and that an order of supervision appears to be necessary and in the best interest of the state trust company and its clients, creditors, and shareholders or participants, or the public.

(b) The banking commissioner may issue the order without prior notice.

(c) Subject to Subsection (d), the supervisor serves until the earlier of:

(1) the expiration of the period stated in the order of supervision; or

(2) the date the banking commissioner determines that the requirements for abatement of the order have been satisfied.

(d) The banking commissioner may terminate an order of supervision at any time.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. [1401](#)), Sec. 16, eff. September 1, 2017.

Sec. 185.102. ORDER OF CONSERVATORSHIP. (a) The banking commissioner by order may appoint a conservator for a state trust company if the banking commissioner determines from examination or other credible evidence that the state trust company is in hazardous condition and immediate and irreparable harm is threatened to the state trust company, its clients, creditors, or shareholders or participants, or the public.

(b) The banking commissioner may issue the order without prior notice at any time before, during, or after the period of supervision.

(c) An order of conservatorship issued under this section must specifically state the basis for the order.

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

Sec. 185.103. HEARING. (a) An order issued under Section [185.101](#) or [185.102](#) must contain or be accompanied by a notice that, at the request of the state trust company, a hearing will be held before the banking commissioner at which the state trust company may cross-examine witnesses and present evidence to contest the order or show that it has satisfied all requirements for abatement of the order. The banking commissioner has the burden of proof for any continuation of the order or the issuance of a new order.

(b) To contest or modify the order or demonstrate that it has satisfied all requirements for abatement of the order, the state trust company shall submit to the banking commissioner a written request for a hearing. The request must state the grounds for the request to set aside or modify the order. On receiving a request for hearing, the banking commissioner shall serve notice of the time and place of the hearing, which must be not later than the 10th day after the date the banking commissioner receives the request for a hearing unless the parties agree to a later hearing date. The notice must be delivered by personal delivery or by



registered or certified mail, return receipt requested.

(c) The banking commissioner may:

(1) delay a decision for a prompt examination of the state trust company; and

(2) reopen the record as necessary to allow presentation of the results of the examination and appropriate opportunity for cross-examination and presentation of other relevant evidence.

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

Sec. 185.104. POST-HEARING ORDER. (a) If after the hearing the banking commissioner finds that the state trust company has been rehabilitated, that its hazardous condition has been remedied, that irreparable harm is no longer threatened, or that the state trust company should otherwise be released from the order, the banking commissioner shall release the state trust company from the order, subject to conditions the banking commissioner from the evidence believes are warranted to preserve the safety and soundness of the state trust company.

(b) If after the hearing the banking commissioner finds that the state trust company has failed to comply with the lawful requirements of the banking commissioner, has not been rehabilitated, is insolvent, or otherwise continues in hazardous condition, the banking commissioner by order shall:

(1) appoint or reappoint a supervisor pursuant to Section 185.101;

(2) appoint or reappoint a conservator pursuant to Section 185.102; or

(3) take other appropriate action authorized by law.

(c) An order issued under Subsection (b) is immediately final for purposes of appeal. The order may be appealed as provided by Sections 181.202 and 181.204.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 27, eff.

September 1, 2019.

Sec. 185.105. CONFIDENTIALITY OF RECORDS. An order issued under this subchapter and a copy of a notice, correspondence, transcript, pleading, or other document in the records of the department relating to the order are confidential and may be released only as provided by Subchapter D, Chapter 181, except that the banking commissioner may release to the public an order or information relating to the existence of an order if the banking commissioner concludes that the release would enhance effective enforcement of the order.

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

Sec. 185.106. DUTIES OF STATE TRUST COMPANY UNDER SUPERVISION. During a period of supervision, a state trust company, without the prior approval of the banking commissioner or the supervisor or as otherwise permitted or restricted by the order of supervision, may not:

- (1) dispose of, sell, transfer, convey, or encumber the state trust company's assets;
- (2) lend or invest the state trust company's funds;
- (3) incur a debt, obligation, or liability;
- (4) pay a cash dividend to the state trust company's shareholders or participants;
- (5) solicit or accept any new client accounts; or
- (6) remove an executive officer or director, change the number of executive officers or directors, or have any other change in the position of executive officer or director.

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. 16, eff. June 14, 2013.

Sec. 185.107. POWERS AND DUTIES OF CONSERVATOR. (a) A conservator appointed under this subchapter shall immediately take

charge of the state trust company and all of its property, books, records, and affairs on behalf and at the direction and control of the banking commissioner.

(b) Subject to any limitation contained in the order of appointment or other direction of the banking commissioner, the conservator has all the powers of the directors, managers, managing participants, officers, and shareholders or participants of a state trust company and shall conduct the business of the state trust company and take all steps the conservator considers appropriate to remove the causes and conditions requiring the conservatorship. During the conservatorship, the board may not direct or participate in the affairs of the state trust company.

(c) Except as otherwise provided by this subchapter, by rules adopted under this subtitle, or by Section 12.106, the conservator has the rights and privileges and is subject to the duties, restrictions, penalties, conditions, and limitations of the directors, officers, and employees of state trust companies. Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.108. QUALIFICATIONS OF APPOINTEE. The banking commissioner may appoint as a supervisor or conservator any person who in the judgment of the banking commissioner is qualified to serve. The banking commissioner may serve as, or may appoint an employee of the department to serve as, a supervisor or conservator. Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.109. EXPENSES. (a) The banking commissioner shall determine and approve the reasonable expenses attributable to the service of a supervisor or conservator, including costs incurred by the department and the compensation and expenses of the supervisor or conservator and any professional employees appointed to represent or assist the supervisor or conservator. The banking commissioner or an employee of the department may not receive compensation in addition to salary for serving as supervisor or

conservator, but the department may receive reimbursement for the fully allocated personnel cost associated with service of the banking commissioner or an employee as supervisor or conservator.

(b) All approved expenses shall be paid by the state trust company as the banking commissioner determines. The banking commissioner has a lien against the assets and funds of the state trust company to secure payment of approved expenses. The lien has a higher priority than any other lien against the state trust company.

(c) Notwithstanding any other provision of this subchapter, the state trust company may employ an attorney and other persons the state trust company selects to assist the state trust company in contesting or satisfying the requirements of an order of supervision or conservatorship. The banking commissioner shall authorize the payment of reasonable fees and expenses from the state trust company for the attorney or other persons as expenses of the supervision or conservatorship.

(d) The banking commissioner may defer collection of assessment and examination fees by the department from the state trust company during a period of supervision or conservatorship if deferral appears to aid prospects for rehabilitation. As a condition of release from supervision or conservatorship, the banking commissioner may require the rehabilitated state trust company to pay or develop a reasonable plan for payment of deferred fees.

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

Sec. 185.110. REVIEW OF SUPERVISOR OR CONSERVATOR DECISIONS. (a) Notwithstanding Section 185.107(b), a majority of the state trust company's board, acting directly or through counsel who affirmatively represents that the requisite majority has been obtained, may request in writing that the banking commissioner review an action taken or proposed by the supervisor or conservator. The request must specify why the action would not be in the best interest of the state trust company. The banking commissioner shall investigate to the extent necessary and make a

prompt written ruling on the request. If the action has not yet been taken or if the effect of the action can be postponed, the banking commissioner may stay the action on request pending review.

(b) If a majority of the state trust company's board objects to the banking commissioner's ruling, the majority may request a hearing before the banking commissioner. The request must be made not later than the 10th day after the date the state trust company is notified of the ruling.

(c) The banking commissioner shall give the board notice of the time and place of the hearing by personal delivery or by registered or certified mail, return receipt requested. The hearing may not be held later than the 10th day after the date the banking commissioner receives the request for a hearing unless the parties agree to a later hearing date. At the hearing the board has the burden of proof to demonstrate that the action is not in the best interest of the state trust company.

(d) After the hearing, the banking commissioner may affirm, modify, or set aside in whole or part the prior ruling. An order supporting the action contested by the board is immediately final for purposes of appeal. The order may be appealed as provided by Sections [181.202](#) and [181.204](#).

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. [614](#)), Sec. 28, eff. September 1, 2019.

Sec. 185.111. SUIT FILED AGAINST OR ON BEHALF OF STATE TRUST COMPANY UNDER SUPERVISION OR CONSERVATORSHIP. (a) A suit filed against a state trust company while the state trust company is under conservatorship, or against a person in connection with an action taken or decision made by that person as a supervisor or conservator of a state trust company, must be brought in Travis County regardless of whether the state trust company remains under an order of supervision or conservatorship.

(b) A conservator may sue a person on the trust company's behalf to preserve, protect, or recover state trust company assets,

including claims or causes of action. The suit may be in:

(1) Travis County; or

(2) another location where jurisdiction and venue against that person may be obtained under law.

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

Sec. 185.112. DURATION. A supervisor or conservator serves for the period necessary to accomplish the purposes of the supervision or conservatorship as intended by this subchapter. A rehabilitated state trust company shall be returned to its former or new management under conditions reasonable and necessary to prevent recurrence of the conditions causing the supervision or conservatorship.

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

Sec. 185.113. ADMINISTRATIVE ELECTION OF REMEDIES. The banking commissioner may take any action authorized under Chapter 186 regardless of the existence of supervision or conservatorship. A period of supervision or conservatorship is not required before a trust company is closed for liquidation or other remedial action is taken.

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

Sec. 185.114. RELEASE BEFORE HEARING. This subchapter does not prevent release of a state trust company from supervision or conservatorship before a hearing if the banking commissioner is satisfied that requirements for abatement have been adequately satisfied.

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

SUBCHAPTER C. UNAUTHORIZED TRUST ACTIVITY: INVESTIGATION AND  
ENFORCEMENT

Sec. 185.201. INVESTIGATION OF UNAUTHORIZED TRUST ACTIVITY. (a) If the banking commissioner has reason to believe that a person has engaged, is engaging, or is likely to engage in an unauthorized trust activity, the banking commissioner may:

(1) investigate as necessary within or outside this state to:

(A) determine whether the unauthorized trust activity has occurred or is likely to occur; or

(B) aid in the enforcement of the laws administered by the banking commissioner;

(2) initiate appropriate disciplinary action as provided by this subchapter; and

(3) report any unauthorized trust activity to a law enforcement agency or another regulatory agency with appropriate jurisdiction.

(b) The banking commissioner may:

(1) on written request furnish to a law enforcement agency evidence the banking commissioner has compiled in connection with the unauthorized activity, including materials, documents, reports, and complaints; and

(2) assist the law enforcement agency or other regulatory agency as requested.

(c) A person acting without malice, fraudulent intent, or bad faith is not subject to liability, including liability for libel, slander, or other relevant tort, because the person files a report or furnishes, orally or in writing, information concerning a suspected, anticipated, or completed unauthorized activity to a law enforcement agency, the banking commissioner or another regulatory agency with appropriate jurisdiction, or an agent or employee of a law enforcement agency, the banking commissioner, or other regulatory agency. The person is entitled to attorney's fees and court costs if the person prevails in an action for libel, slander, or any other relevant tort based on the report or other information the person furnished as provided by this subchapter.

(d) This section does not:

(1) affect or modify a common law or statutory privilege or immunity;

(2) preempt the authority or relieve the duty of a law enforcement agency or other regulatory agency with appropriate jurisdiction to investigate and prosecute suspected criminal acts;

(3) prohibit a person from voluntarily disclosing information to a law enforcement agency or other regulatory agency;  
or

(4) limit a power or duty granted to the banking commissioner under this subtitle or other law.

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

Sec. 185.202. SUBPOENA AUTHORITY. (a) This section applies only to an investigation of an unauthorized trust activity as provided by Section 185.201, and does not affect the conduct of a contested case under Chapter 2001, Government Code.

(b) The banking commissioner may issue a subpoena to compel the attendance and testimony of a witness or the production of a book, account, record, paper, or correspondence relating to a matter that the banking commissioner has authority to consider or investigate at the department's offices in Austin or at another place the banking commissioner designates.

(c) The subpoena must be signed and issued by the banking commissioner or a deputy banking commissioner.

(d) A person who is required by subpoena to attend a proceeding before the banking commissioner is entitled to receive:

(1) reimbursement for mileage, in the amount provided for travel by a state employee, for traveling to or returning from a proceeding that is more than 25 miles from the witness's residence;  
and

(2) a fee for each day or part of a day the witness is necessarily present as a witness in an amount equal to the per diem travel allowance of a state employee.

(e) The banking commissioner may serve the subpoena or have it served by an authorized agent of the banking commissioner, a sheriff, or a constable. The sheriff or constable's fee for serving the subpoena is the same as the fee paid the sheriff or constable for similar services.



(f) A person possessing materials located outside this state that are requested by the banking commissioner may make the materials available to the banking commissioner or a representative of the banking commissioner for examination at the place where the materials are located. The banking commissioner may:

(1) designate a representative, including an official of the state in which the materials are located, to examine the materials; and

(2) respond to a similar request from an official of another state, the United States, or a foreign country.

(g) A subpoena issued under this section to a financial institution is not subject to Section 59.006.

(h) Except to the extent disclosure is necessary to locate and produce responsive records or obtain legal representation and subject to Subsection (i), a subpoena issued under this section may provide that the person to whom the subpoena is directed or any person who comes into receipt of the subpoena may not:

(1) disclose that the subpoena has been issued;

(2) disclose or describe any records requested in the subpoena;

(3) disclose whether records have been furnished in response to the subpoena; or

(4) if the subpoena requires a person to be examined under oath, disclose or describe the examination, including the questions asked, the testimony given, or the transcript produced.

(i) A subpoena issued under this section may prohibit the disclosure of information described by Subsection (h) only if the banking commissioner finds, and the subpoena states, that:

(1) the subpoena, the examination, or the records relate to an ongoing investigation; and

(2) the disclosure could significantly impede or jeopardize the investigation.

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. 3.11, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 6.103(e), eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. 1823), Sec. 11, eff. September 1, 2019.

Sec. 185.203. ENFORCEMENT OF SUBPOENA. (a) If necessary, the banking commissioner may apply to a district court in Travis County or in the county in which the subpoena was served for enforcement of the subpoena, and the court may issue an order compelling compliance.

(b) If the court orders compliance with the subpoena or finds the person in contempt for failure to obey the order, the banking commissioner, or the attorney general if representing the banking commissioner, may recover reasonable court costs, attorney's fees, and investigative costs incurred in the proceeding.

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

Sec. 185.204. CONFIDENTIALITY OF SUBPOENAED RECORDS. (a) A book, account, record, paper, correspondence, or other document subpoenaed and produced under Section 185.202 that is otherwise made privileged or confidential by law remains privileged or confidential unless admitted into evidence at an administrative hearing or in a court. The banking commissioner may issue an order protecting the confidentiality or privilege of the document and restricting its use or distribution by any person or in any proceeding, other than a proceeding before the banking commissioner.

(b) Subject to Subchapter D, Chapter 181, and confidentiality provisions of other law administered by the banking commissioner, information or material acquired under Section 185.202 under a subpoena is not a public record for the period the banking commissioner considers reasonably necessary to complete the investigation, protect the person being investigated from unwarranted injury, or serve the public interest. The information or material is not subject to a subpoena, except a grand jury subpoena, until released for public inspection by the banking commissioner or, after notice and a hearing, a district court

determines that the public interest and any investigation by the banking commissioner would not be jeopardized by obeying the subpoena. The district court order may not apply to:

(1) a record or communication received from another law enforcement or regulatory agency except on compliance with the confidentiality laws governing the records of the other agency; or

(2) an internal note, memorandum, report, or communication made in connection with a matter that the banking commissioner has the authority to consider or investigate, except on good cause and compliance with applicable confidentiality laws.

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

Sec. 185.205. EVIDENCE. (a) On certification by the banking commissioner, a book, record, paper, or document produced or testimony taken as provided by Section 185.202 and held by the department is admissible as evidence in any case without prior proof of its correctness and without other proof. The certified book, record, document, or paper, or a certified copy, is prima facie evidence of the facts it contains.

(b) This section does not limit another provision of this subtitle or a law that provides for the admission of evidence or its evidentiary value.

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

Sec. 185.206. CEASE AND DESIST ORDER REGARDING UNAUTHORIZED TRUST ACTIVITY. (a) The banking commissioner may serve a proposed cease and desist order on a person the banking commissioner believes is engaging or is likely to engage in an unauthorized trust activity. The order must:

(1) be delivered by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;

(2) state the acts or practices alleged to be an unauthorized activity; and

(3) state the effective date of the order, which may

not be earlier than the 21st day after the date the proposed order is mailed or delivered.

(b) Unless the person against whom the proposed order is directed requests a hearing in writing before the effective date of the proposed order, the order takes effect and is final and nonappealable as to that person.

(c) A requested hearing on a proposed order shall be held not later than the 30th day after the date the first written request for a hearing on the order is received by the banking commissioner unless the parties agree to a later hearing date. At the hearing, the banking commissioner has the burden of proof and must present evidence in support of the order. Each person against whom the order is directed may cross-examine witnesses and show cause why the order should not be issued.

(d) After the hearing, the banking commissioner shall issue or decline to issue a cease and desist order. The proposed order may be modified as necessary to conform to the findings at the hearing. An order issued under this subsection:

(1) is immediately final for purposes of enforcement and appeal; and

(2) must require the person to immediately cease and desist from the unauthorized trust activity.

(e) The banking commissioner may release a final cease and desist order issued under this section or information relating to the existence of the order to the public if the banking commissioner finds that the release would enhance the effective enforcement of the order or will serve the public interest.

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

Sec. 185.207. EMERGENCY CEASE AND DESIST ORDER. (a) The banking commissioner may issue an emergency cease and desist order to a person who the banking commissioner reasonably believes is engaging in a continuing unauthorized trust activity that is fraudulent or threatens immediate and irreparable public harm.

(b) The order must:

(1) be delivered on issuance to each person affected

by the order by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;

(2) state the specific charges and require the person immediately to cease and desist from the unauthorized activity; and

(3) contain a notice that a request for hearing may be filed under this section.

(c) Unless a person against whom the emergency order is directed requests a hearing in writing before the 11th day after the date it is served on the person, the emergency order is final and nonappealable as to that person. A request for a hearing must:

(1) be in writing and directed to the banking commissioner; and

(2) state the grounds for the request to set aside or modify the order.

(d) On receiving a request for a hearing, the banking commissioner shall serve notice of the time and place of the hearing by personal delivery or registered or certified mail, return receipt requested. The hearing must be held not later than the 10th day after the date the banking commissioner receives the request for a hearing unless the parties agree to a later hearing date. At the hearing, the banking commissioner has the burden of proof and must present evidence in support of the order. The person requesting the hearing may cross-examine witnesses and show cause why the order should not be affirmed.

(e) After the hearing, the banking commissioner shall affirm, modify, or set aside in whole or part the emergency cease and desist order. An order affirming or modifying the emergency cease and desist order is immediately final for purposes of enforcement and appeal.

(f) An order continues in effect unless the order is stayed by the banking commissioner. The banking commissioner may impose any condition before granting a stay of the order.

(g) The banking commissioner may release a final cease and desist order issued under this section or information regarding the existence of the order to the public if the banking commissioner finds that the release would enhance the effective enforcement of

the order or will serve the public interest.

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

Sec. 185.208. APPEAL OF CEASE AND DESIST ORDER. (a) A person affected by a cease and desist order issued, affirmed, or modified after a hearing may file a petition for judicial review.

(b) A filed petition for judicial review does not stay or vacate the order unless the court, after hearing, specifically stays or vacates the order.

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

Sec. 185.209. VIOLATION OF FINAL CEASE AND DESIST ORDER.

(a) If the banking commissioner reasonably believes that a person has violated a final and enforceable cease and desist order, the banking commissioner may:

(1) initiate administrative penalty proceedings under Section [185.210](#);

(2) refer the matter to the attorney general for enforcement by injunction and any other available remedy; or

(3) pursue any other action the banking commissioner considers appropriate under applicable law.

(b) If the attorney general prevails in an action brought under Subsection (a)(2), the attorney general is entitled to reasonable attorney's fees.

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

Sec. 185.210. ADMINISTRATIVE PENALTY. (a) The banking commissioner may initiate an action for an administrative penalty against a person for a violation of a cease and desist order by serving on the person notice of the time and place of a hearing on the penalty. The notice must be delivered by personal delivery or registered or certified mail, return receipt requested, to the person's last known address. The hearing may not be held earlier than the 20th day after the date the notice is served. The notice

must contain a statement of the facts or conduct alleged to be in violation of the cease and desist order.

(b) In determining whether a cease and desist order has been violated, the banking commissioner shall consider the maintenance of procedures reasonably adopted to ensure compliance with the order.

(c) If the banking commissioner after the hearing determines that a cease and desist order has been violated, the banking commissioner may:

(1) impose an administrative penalty in an amount not to exceed \$25,000 for each separate act of unauthorized activity;

(2) direct the person against whom the order was issued to make complete restitution, in the form and amount and within the period determined by the banking commissioner, to each resident of this state and entity operating in this state damaged by the violation; or

(3) both impose the penalty and direct restitution.

(d) In determining the amount of the penalty and whether to impose restitution, the banking commissioner shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation;

(6) whether the violation was intentional or unintentional;

(7) the financial ability of the person against whom the penalty is to be assessed; and

(8) any other matter that justice may require.

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

Sec. 185.211. PAYMENT AND APPEAL OF ADMINISTRATIVE PENALTY.

(a) When an administrative penalty order under Section 185.210 becomes final, a person affected by the order, within the time permitted by law for appeal, shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the time permitted by law for appeal, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the banking commissioner by certified mail.

(c) Not later than the fifth day after the date the banking commissioner receives a copy of an affidavit under Subsection (b)(2), the banking commissioner may file with the court a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(d) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the banking commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

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



1999.

Sec. 185.212. JUDICIAL REVIEW OF ADMINISTRATIVE PENALTY.

(a) If on judicial review the court sustains the penalty order, the court shall order the person to pay the full amount of the penalty or a lower amount determined by the court. If the court does not sustain the order, a penalty is not owed.

(b) When the judgment of the court becomes final, if the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest computed at the annual rate of 10 percent be remitted to the person. The interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount of the penalty.

(c) If the judgment of the court requires payment of a penalty that has not previously been paid, the court shall order as part of its judgment that interest accrues on the penalty at the annual rate of 10 percent, beginning on the date the judgment is final and ending on the date the penalty and interest are paid.

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