FINANCE CODE

TITLE 3. FINANCIAL INSTITUTIONS AND BUSINESSES

SUBTITLE A. BANKS

CHAPTER 32. POWERS, ORGANIZATION, AND FINANCIAL REQUIREMENTS

SUBCHAPTER A. ORGANIZATION AND POWERS IN GENERAL

Sec. 32.001. ORGANIZATION AND GENERAL POWERS OF STATE BANK. (a) One or more persons, a majority of whom are residents of this state, may organize a state bank as a banking association or a limited banking association.

(b) A state bank may:

(1) receive and pay deposits with or without interest, discount and negotiate promissory notes, borrow or lend money with or without security or interest, invest and deal in securities, buy and sell exchange, coin, and bullion, and exercise incidental powers as necessary to carry on the business of banking as provided by this subtitle;

(2) act as agent, or in a substantially similar capacity, with respect to a financial activity or an activity incidental or complementary to a financial activity;

(3) act in a fiduciary capacity, without giving bond, as guardian, receiver, executor, administrator, or trustee, including a mortgage or indenture trustee;

(4) provide financial, investment, or economic advisory services;

(5) issue or sell instruments representing pools of assets in which a bank may invest directly;

(6) with prior written approval of the banking commissioner, engage in a financial activity or an activity that is incidental or complementary to a financial activity; and

(7) engage in any other activity, directly or through a subsidiary, authorized by this subtitle or rules adopted under this subtitle.

(c) For purposes of other state law, a banking association is considered a corporation and a limited banking association is considered a limited liability company. To the extent consistent

with this subtitle, a banking association may exercise the powers of a Texas business corporation and a limited banking 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 bank may contribute to a community fund or to another charitable, philanthropic, or benevolent instrumentality conducive to public welfare an amount that the bank's board considers expedient and in the interests of the bank.

(e) A state bank may be organized or reorganized as a community development financial institution or may serve as a community development partner, as those terms are defined by the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. No. 103-325).

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

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 4, eff. Sept. 1, 2001.

Sec. 32.002. CERTIFICATE OF FORMATION OF STATE BANK. (a) The certificate of formation of a state bank must be signed and acknowledged by each organizer and must contain:

(1) the name of the bank, subject to Subsection (b);

(2) the period of the bank's duration, which may be perpetual, subject to Subsection (c);

(3) the powers of the bank, which may be stated as:

(A) all powers granted by law to a state bank; or

(B) a list of the specific powers under Section 32.001 that the bank chooses to exercise;

(4) the aggregate number of shares that the bank will be authorized to issue and the number of classes of shares, which may be one or more;

(5) if the 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

of each class, which in the case of a limited banking association may be more fully set forth in the participation agreement;

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

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

(6) any provision limiting or denying to shareholders the preemptive right to acquire additional or treasury shares of the bank;

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

(8) the aggregate amount of consideration to be received for all shares initially issued by the bank and a statement that:

(A) all authorized shares have been subscribed; and

(B) all subscriptions received have been irrevocably paid in cash;

(9) any provision that is otherwise required by this subtitle to be set forth in the certificate of formation;

(10) the street address of the bank's initial home office;

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

(12) subject to Section 32.008, 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 bank, including provisions permissible under the Business Organizations Code for:

(A) a for-profit corporation, in the case of a proposed banking association; or

(B) a limited liability company, in the case of a proposed limited banking association.

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

(c) A state bank, other than a private bank, organized before August 31, 1993, is considered to have perpetual existence, notwithstanding a contrary statement in its articles of association, unless after September 1, 1995, the bank amends its certificate of formation or articles of association to reaffirm its limited duration.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 237, Sec. 80, eff. September 1, 2007.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 8, eff. September 1, 2007.

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

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

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 2, eff. June 14, 2013.

Sec. 32.003. APPLICATION FOR STATE BANK CHARTER; STANDARDS FOR APPROVAL. (a) An application for a state bank charter must be made under oath and in the form required by the banking commissioner, who shall inquire fully into the identity and character of each proposed director, officer, and principal shareholder. The application must be accompanied by all charter fees and deposits required by law.

(b) The banking commissioner shall grant a state bank charter only if the commissioner determines that the organizers have established that public convenience and advantage will be promoted by the establishment of the state bank. 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 plan;

(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 officers and directors as a group have sufficient banking experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the bank will operate in compliance with law and that success of the bank is probable;

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

(5) the organizers are acting in good faith.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 9, eff. September 1, 2007.

Sec. 32.004. 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 in which the bank is to be located, or in another publication or location as directed by the banking commissioner.

(b) At the expense of the organizers, the banking commissioner shall thoroughly investigate the application. 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 chapter. Except as provided by Subchapter D, Chapter 31, or in rules regarding confidential information, the business plan of the applicant and

the financial statement of a proposed officer or director are confidential and not subject to public disclosure.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 2.07, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 10, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 10.003, eff. September 1, 2009.

Sec. 32.005. 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 32.004(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 32.003(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 one or more prehearing conferences and opportunities for discovery as the banking commissioner considers advisable and consistent with the applicable law, 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 the application meets the requirements of Section 32.003(b) and shall enter an order granting or denying the charter.

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

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

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 3, eff. September 1, 2007.

Sec. 32.006. ISSUANCE OF CERTIFICATE OF AUTHORITY. A state

bank may not engage in the business of banking until it receives a certificate of authority from the banking commissioner. The banking commissioner may not deliver the certificate of authority until the bank has:

(1) received cash for the issuance of all authorized shares in the full amount subscribed;

(2) elected or qualified the initial officers and directors named in the application for charter or other officers and directors approved by the banking commissioner; and

(3) complied with all the other requirements of this subtitle relating to the organization of state banks.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 11, eff. September 1, 2007.

Sec. 32.007. DEADLINE TO BEGIN BUSINESS. If the state bank does not open and engage in the business of banking within six months after the date of the granting of its charter, the banking commissioner may forfeit the charter or cancel the conditional approval of application for charter without judicial action.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 32.008. APPLICATION OF GENERAL CORPORATE LAW. (a) The Business Organizations Code applies to a banking association as if it were a for-profit corporation, and to a limited banking association as if it were a limited liability company, to the extent not inconsistent with this subtitle or the proper business of a state bank, except that:

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

(2) the right of shareholders to cumulative voting in the election of directors exists only if granted by the bank's certificate of formation.

(b) The finance commission may adopt rules to limit or refine the applicability of the laws listed by Subsection (a) to a

state bank or to alter or supplement the procedures and requirements of those laws applicable to an action taken under this chapter.

(c) Unless expressly authorized by this subtitle or a rule adopted under this subtitle, a state bank may not take an action authorized by a law listed by Subsection (a) regarding its corporate status, its capital structure, or a matter of corporate governance, of the type for which those laws would require a filing with the secretary of state if the bank were a filing entity, without submitting the filing to the banking commissioner and obtaining the banking commissioner's prior written approval of the action.

(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.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 6, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 12, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 3, eff. June 14, 2013.

Sec. 32.009. PARITY BETWEEN STATE AND NATIONAL BANKS. (a) Section 16(a), Article XVI, Texas Constitution, empowers the legislature to authorize the incorporation of state banks and provide for a system of state regulation and control of state banks that will adequately protect and secure depositors and creditors. Section 16(c), Article XVI, Texas Constitution, grants to state banks created by virtue of the power vested in the legislature by Section 16(a) of that article the same rights and privileges that are or may be granted to national banks domiciled in this state. The legislature finds that Section 16(c) of that article does not restrict the legislature's power to provide a system of state regulation under Section 16(a) of that article that differs from the regulatory scheme imposed on national banks under federal law

or prevent the finance commission, acting under authority granted by the legislature for the purpose of implementing this subtitle, from adopting rules that differ from federal statutes and regulations or that reasonably regulate the method or manner by which a state bank exercises its rights and privileges if the rules are adopted after due consideration of the factors listed in Section 31.003(b). The legislature further finds that Section 16(c), Article XVI, Texas Constitution, does not limit any rights or powers specifically given to state banks by the laws of this state.

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

(1) a national bank domiciled in this state does not possess the specific right or privilege to perform the activity the bank seeks to perform; or

(2) the performance of the activity by the bank would adversely affect the safety and soundness of the bank.

(c) The banking commissioner may extend the 30-day period under Subsection (b) if the banking commissioner determines that the bank's letter raises issues requiring additional information or additional time for analysis. If the 30-day period is extended, the bank 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 31.201 not later than the 60th day

after the date the banking commissioner receives the bank'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 bank 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 31.202 and 31.204 or may resubmit a letter under this subsection with additional information or authority relevant to the banking commissioner's determination. A denial is immediately final for purposes of appeal.

(e) To effectuate the Texas Constitution, the finance commission may adopt rules implementing the method or manner in which a state bank exercises specific rights and privileges granted under Section 16(c), Article XVI, Texas Constitution, including rules regarding the exercise of rights and privileges that would be prohibited to state banks but for Section 16(c) of that article. The finance commission may not adopt rules under this subsection unless it considers the factors listed in Section 31.003(b) and finds that:

(1) national banks domiciled in this state possess the rights or privileges to perform activities the rule would permit state banks to perform; and

(2) 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 bank in compliance with and in the manner authorized by this section is not a violation of any statute of this state.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 12, eff. September 1, 2019.

Sec. 32.010. ADDITIONAL POWERS. (a) Notwithstanding another law, a Texas state bank may perform an act, own property, or

offer a product or service that is at the time permissible within the United States for a depository institution organized under federal law or the law of this state or another state, if the banking commissioner approves the exercise of the power as provided by this section, subject to the same limitations and restrictions applicable to the other depository institution by pertinent law, except to the extent the limitations and restrictions are modified by rules adopted under Subsection (e). This section may not be used by a Texas state bank to alter or negate the application of the laws of this state with respect to:

(1) establishment and maintenance of a branch in this state or another state or country;

(2) permissible interest rates and loan fees chargeable in this state;

(3) fiduciary duties owed to a client or customer by the bank in its capacity as fiduciary in this state;

(4) consumer protection laws applicable to transactions in this state; or

(5) licensing and regulatory requirements administered by a functional regulatory agency in this state, as defined by Section 31.303, including licensing and regulatory requirements pertaining to:

(A) insurance activities;

(B) securities activities; and

(C) real estate development, marketing, and sales activities.

(b) A state bank that intends to exercise a power, directly or through a subsidiary, granted by Subsection (a) that is not otherwise authorized for state banks under the statutes of this state shall submit a letter to the banking commissioner describing in detail the power that the bank proposes to exercise and the specific authority of another depository institution to exercise the power. The bank shall attach copies, if available, of relevant law, regulations, and interpretive letters. The bank may begin to exercise the proposed power after the 30th day after the date the banking commissioner receives the bank's letter unless the banking commissioner specifies an earlier or later date or prohibits the

activity. The banking commissioner may prohibit the bank from exercising the power only if the banking commissioner finds that:

(1) specific authority does not exist for another depository institution to exercise the proposed power;

(2) if the state bank is insured by the Federal Deposit Insurance Corporation, the state bank is prohibited from exercising the power pursuant to Section 24, Federal Deposit Insurance Act (12 U.S.C. Section 1831a), and related regulations; or

(3) the exercise of the power by the bank would adversely affect the safety and soundness of the bank.

(c) The banking commissioner may extend the 30-day period under Subsection (b) if the banking commissioner determines that the bank's letter raises issues requiring additional information or additional time for analysis. If the 30-day period is extended, the bank may exercise the proposed power only on prior written approval by the banking commissioner, except that the banking commissioner must approve or prohibit the proposed power or convene a hearing under Section 31.201 not later than the 60th day after the date the banking commissioner receives the bank's letter. If a hearing is convened, the banking commissioner must approve or prohibit the proposed power not later than the 30th day after the date the hearing is completed.

(d) A state bank that is denied the requested power by the banking commissioner under this section may appeal as provided by Sections 31.202 and 31.204 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) To effectuate this section, the finance commission may adopt rules implementing the method or manner in which a state bank exercises specific powers granted under this section, including rules regarding the exercise of a power that would be prohibited to state banks under state law but for this section. The finance commission may not adopt rules under this subsection unless it considers the factors listed in Section 31.003(b) and finds that:

(1) the conditions for prohibition by the banking commissioner under Subsection (b) do not exist; and

(2) if the rights and privileges would be prohibited to state banks 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 affect.

(f) The exercise of a power by a state bank 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. 344, Sec. 2.006, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 7, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 13, eff. September 1, 2019.

Sec. 32.011. FINANCIAL ACTIVITIES. (a) The finance commission by rule may determine that an activity not otherwise approved or authorized for a state bank under this subtitle or other law 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 banks compete;

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

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

(A) compete effectively with another company seeking to provide 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 financial services or for the document imaging of data;

(5) whether the activity would pose a substantial risk to the safety or soundness of a state bank or the financial system generally;

(6) if otherwise determined to be permissible, whether the conduct of the activity by a state bank 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 bank and the financial system generally; and

(7) whether a state bank would be permitted to engage in the activity under applicable federal law, including 12 U.S.C. Section 1831a, and related regulations.

(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. 8, eff. Sept. 1, 2001.

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

Sec. 32.101. AMENDMENT OR RESTATEMENT OF STATE BANK CERTIFICATE OF FORMATION. (a) A state bank that has been granted a certificate of authority 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 bank's board to establish series and determine the preferences, limitations, and relative rights of each series.

(c) Amendment or restatement of the certificate of formation of a state bank and approval of the bank's board and shareholders must be made or obtained as provided by 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. 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 of the amendment or restatement with the date of approval and the word "Approved";

(2) file the original of the amendment or restatement in the department's records; and

(3) deliver a certified copy of the amendment or restatement to the bank.

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

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 13, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 5, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 6, eff. June 14, 2013.

Sec. 32.102. ESTABLISHING SERIES OF SHARES. (a) If the certificate of formation expressly gives the board of a state bank authority to establish shares in series and determine the preferences, limitations, and relative rights of each series, the board may do so only in compliance with this section and any rules adopted under this subtitle.

(b) A series of shares may be established in the manner provided by the Business Organizations Code, but the shares of the series may not be issued and sold without the prior written approval of the banking commissioner under Section 32.103. The bank 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 to approve or reject a proposed series under this section.

(d) If the banking commissioner finds that the interests of depositors and creditors will not be adversely affected by the series, that the series 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 of the statement in the

department's records; and

(3) deliver a certified copy of the statement to the state bank.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 14, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 15, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 7, eff. June 14, 2013.

Sec. 32.103. CHANGE IN OUTSTANDING CAPITAL AND SURPLUS. (a) A state bank may not reduce or increase its outstanding capital and surplus through dividend, redemption, issuance of shares, or otherwise, without the prior written approval of the banking commissioner, except as permitted by this section or rules adopted under this subtitle.

(b) Unless restricted by rule, prior written approval is not required for an increase in capital and surplus accomplished through:

(1) issuance of shares of common stock for cash, or a cash contribution to surplus by shareholders 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 capital or surplus.

(c) Prior approval is not required for:

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

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

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 16, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 4, eff. September 1, 2007.

Sec. 32.104. CAPITAL NOTES OR DEBENTURES. (a) With the prior written approval of the banking commissioner, a state bank may at any time, through action of its board and without requiring action of its shareholders, issue and sell its capital notes or debentures. The capital 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 the shareholders.

(b) Capital notes or debentures may be convertible into 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 bank may not pay interest due or principal repayable on outstanding capital notes or debentures when the bank is in hazardous condition or is insolvent, or to the extent that payment will cause the bank to be in hazardous condition or insolvent, as determined by the banking commissioner.

(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 bank may be included in equity capital of the bank for purposes of determining hazardous condition or insolvency and for other purposes provided by rules adopted under this subtitle.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 17, eff. September 1, 2007.

SUBCHAPTER C. BANK OFFICES

Sec. 32.201. CONDUCT OF THE BUSINESS OF BANKING. (a) A

state bank may engage in the banking business at its home office, at an approved branch office location, and through electronic terminals. A drive-in facility must be approved as a branch if it is more than 2,000 feet from the nearest wall of the bank's home office or another approved branch office.

(b) A function of a state bank that does not involve banking contact with the public may be conducted at any location without prior written approval of the banking commissioner. The finance commission may adopt rules further defining functions of a state bank that are not required to be conducted at an approved location.

(c) The finance commission by rule under Section 32.009 may authorize a new form of banking facility. The banking commissioner may approve a new form of banking facility other than as provided by this subchapter if the banking commissioner does not have a significant supervisory or regulatory concern regarding the proposed facility.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 32.202. HOME OFFICE. (a) Each state bank must have and continuously maintain in this state a home office. The home office must be a location at which the bank does business with the public and keeps its corporate books and records. At least one officer of the bank must maintain an office at the home office.

(b) A state bank may change its home office to one of its previously established branch locations in this state, if the location that is the home office before the change is to remain as a branch of the bank, by filing a written notice with the banking commissioner. The notice must set forth the name of the bank, the street address of its home office before the change, the street address of the location to which the home office is to be changed, and a copy of the resolution adopted by the bank's board authorizing the change. The change of home office takes effect on the 31st day after the date the banking commissioner receives the notice unless the banking commissioner consents to a different effective date.

(c) A state bank may change its home office to any location in this state, other than as permitted by Subsection (b), on prior written approval of the banking commissioner. The banking

commissioner shall grant an application under this subsection if the banking commissioner does not have a significant supervisory or regulatory concern regarding the proposed banking facility, the applicant, or an affiliate of the applicant. Any standard established by the banking commissioner or the finance commission regarding the establishment of a branch under Section 32.203 applies to an application for a change of home office that is subject to this subsection, except as otherwise provided by rules adopted under this subtitle.

(d) If the proposed relocation of the bank's home office would effect an abandonment of all or part of the community served by the bank, the bank must establish to the satisfaction of the banking commissioner that the abandonment is consistent with the original determination of public necessity for the establishment of a bank at that location.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.007, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 244 (H.B. 2219), Sec. 2, eff. September 1, 2007.

Sec. 32.203. BRANCH OFFICES. (a) A state bank may establish and maintain a branch office at any location on prior written approval of the banking commissioner. If the banking commissioner does not have a significant supervisory or regulatory concern regarding the proposed branch, the applicant, or an affiliate of the applicant, the banking commissioner shall approve the application.

(b) The finance commission may adopt rules establishing additional standards for the approval of branch offices.

(c) A state bank may not establish or maintain a branch on the premises or property of an affiliate if the affiliate engages in a commercial activity.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 217 (H.B. 944), Sec. 2, eff. May 25, 2007.

Sec. 32.204. DEPOSIT OR LOAN PRODUCTION OFFICES. (a) A state bank may establish one or more deposit or loan production offices for the purpose of:

(1) soliciting deposit accounts, applications for loans, or equivalent transactions;

(2) performing ministerial duties related to solicitations described by Subdivision (1); and

(3) conducting other activities as permitted by rules adopted under this subtitle.

(b) The bank shall notify the banking commissioner in writing of the location of and activities to be conducted at a proposed deposit or loan production office of the bank. The bank may establish the proposed office beginning on the 31st day after the date the banking commissioner receives the bank's notice unless the banking commissioner specifies that the proposed office be established on an earlier or later date.

(c) The banking commissioner may extend the 30-day period prescribed by Subsection (b) on a determination that the bank's notice raises issues that require additional information or time for analysis. If the period is extended, the bank may establish the proposed deposit or loan production office only with the prior written approval of the banking commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 2.08, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 4, eff. June 14, 2013.

SUBCHAPTER D. MERGER

Sec. 32.301. MERGER AUTHORITY. (a) Two or more financial institutions, corporations, or other entities with the authority to participate in a merger, at least one of which is a state bank, 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 bank or is not a financial institution.

(b) Implementation of the merger by the parties and approval of the board, shareholders, or owners of the parties must be made or obtained in accordance with the Business Organizations Code as if the state bank were a filing entity and all other parties to the merger were foreign entities, except as may be otherwise provided by applicable rules.

(c) A consummated merger has the effect provided by the Business Organizations Code. A separate application is not required to relocate the home office of a surviving state bank or to grant authority to a surviving bank to operate new branch offices that previously existed as part of a merging financial institution if the intent of the surviving bank is clearly stated as part of the plan of merger.

(d) A merger under this subchapter does not confer additional powers on a state bank beyond the powers conferred by other provisions of this subtitle.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 18, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 8, eff. June 14, 2013.

Sec. 32.302. APPROVAL OF BANKING COMMISSIONER. (a) If the merger is subject to the prior written approval of the banking commissioner, the original certificate of merger and a number of copies of the certificate equal to the number of surviving, new, and acquiring entities must be filed with the banking commissioner. On this filing, the banking commissioner shall investigate the condition of the merging parties. The banking commissioner may require the submission of additional information the banking commissioner determines necessary to an informed decision to approve or reject a merger under this subchapter.

(b) The banking commissioner shall approve the merger only

if:

(1) each resulting state bank:

(A) has complied with the laws of this state relating to the organization and operation of state banks; and

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

(2) all deposit and other liabilities of each state bank that is a party to the merger have been properly discharged or otherwise assumed or retained by a financial institution;

(3) each surviving, new, or acquiring entity that is not a depository institution will not be engaged in the unauthorized business of banking, and each state bank will not be engaged in a business other than banking or a business incidental to banking;

(4) the parties have complied with the laws of this state; and

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

(c) 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 of the certificate of merger in the department's records; and

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

(d) An approved merger takes effect on the date of approval unless the merger agreement provides for a different effective date.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 9, eff. June 14, 2013.

Sec. 32.303. RIGHTS OF DISSENTERS FROM MERGER. A

shareholder may dissent from the merger to the extent, and by following the procedure provided, by the Business Organizations Code or any rules adopted under this subtitle.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 19, eff. September 1, 2007.

Sec. 32.304. LIMITATION ON CONTROL OF DEPOSITS. (a) A merger is not permitted under this subchapter if, on consummation of the transaction, the resulting state bank, including all insured depository institution affiliates of the resulting state bank, would control 20 percent or more of the total amount of deposits in this state held by all insured depository institutions in this state.

(b) On request of the banking commissioner the applicant shall provide supplemental information to the banking commissioner to aid in a determination under this section, including information that is more current than or in addition to information in the most recently available summary of deposits, reports of condition, or similar reports filed with or produced by state or federal authorities.

(c) In this section, "deposit" and "insured depository institution" have the meanings assigned by Section 3, Federal Deposit Insurance Act (12 U.S.C. Section 1813), as amended.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 2.008, eff. Sept. 1, 1999.

SUBCHAPTER E. PURCHASE OR SALE OF ASSETS

Sec. 32.401. AUTHORITY TO PURCHASE ASSETS. (a) A state bank may purchase assets from another financial institution or other 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 bank's unimpaired capital and surplus. The finance commission by rule may require a state bank 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 bank.

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

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 5, eff. September 1, 2007.

Sec. 32.402. AUTHORITY TO ACT AS DISBURSING AGENT. (a) The purchasing bank may hold the purchase price and any additional money delivered to it by the selling institution in trust for, or as a deposit to the credit of, the selling institution and may act as agent of the selling institution in disbursing the money in trust or on deposit by paying the depositors and creditors of the selling institution.

(b) If the purchasing bank acts under written contract of agency approved by the banking commissioner that specifically names each depositor and creditor and the amount to be paid each, and if the agency is limited to the purely ministerial act of paying those depositors and 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 depositors and creditors named, the purchasing bank:

(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, the depositors and creditors to whom the liabilities are due, or the amounts due the depositors and creditors; or

(B) any preference that results from the payments

made under the contract of agency and the instructions included in it.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 32.403. LIQUIDATION OF SELLING INSTITUTION. If the selling financial 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 bank shall pay to the receiver of the selling institution the balance of the money held by it in trust or on deposit for the selling institution and not yet paid to the depositors and creditors of the selling institution. Without further action the purchasing bank is discharged from all responsibilities to the selling institution and to the selling institution's receiver, depositors, creditors, and shareholders.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 20, eff. September 1, 2007.

Sec. 32.404. PAYMENT TO DEPOSITORS AND CREDITORS. The purchasing bank may pay a depositor or creditor of the selling institution the amount to be paid the person under the terms of the contract of agency by opening an account in the name of the depositor or creditor, crediting the account with the amount to be paid the depositor or creditor under the terms of the agency contract, and mailing or personally delivering a duplicate deposit ticket evidencing the credit to the depositor or creditor at the person's address shown in the records of the selling institution. The relationship between the purchasing bank and the depositor or creditor is that of debtor to creditor only to the extent of the credit reflected by the deposit ticket.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 32.405. SALE OF ASSETS. (a) A state bank may sell a portion of its assets to another financial 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 bank's unimpaired capital and surplus. The finance commission by rule may require a state bank 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 bank.

(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 a branch office or another established location of the state bank, the state bank 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 bank, with the prior written approval of the banking commissioner, may cause the bank to sell all or substantially all of its assets without shareholder approval if:

(1) the banking commissioner finds the interests of depositors and creditors are jeopardized because of insolvency or imminent insolvency and that the sale is in their best interest; and

(2) the Federal Deposit Insurance Corporation or its successor approves the transaction and agrees to provide assistance to the prospective buyer under 12 U.S.C. Section 1823(c) or a comparable law unless the deposits of the bank are not insured.

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

(1) all of the bank's liabilities to depositors;

(2) all of the bank's liabilities for salaries of the bank'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 bank; 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 bank of all or substantially all of its assets with shareholder approval is considered a voluntary dissolution and liquidation and is governed by Subchapter B, Chapter 36.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 21, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 6, eff. September 1, 2007.

Sec. 32.406. LIMITATION ON CONTROL OF DEPOSITS. (a) A purchase of assets is not permitted under Section 32.401 if, on consummation of the transaction, the acquiring state bank, including all insured depository institution affiliates of the resulting state bank, would control 20 percent or more of the total amount of deposits in this state held by all insured depository institutions in this state.

(b) On request of the banking commissioner the applicant shall provide supplemental information to the banking commissioner to aid in a determination under this section, including information that is more current than or in addition to information in the most recently available summary of deposits, reports of condition, or similar reports filed with or produced by state or federal authorities.

(c) In this section, "deposit" and "insured depository institution" have the meanings assigned by Section 3, Federal Deposit Insurance Act (12 U.S.C. Section 1813), as amended.
Added by Acts 1999, 76th Leg., ch. 344, Sec. 2.009, eff. Sept. 1, 1999.

SUBCHAPTER F. EXIT OF STATE BANK OR ENTRY OF ANOTHER FINANCIAL INSTITUTION

Sec. 32.501. MERGER OR CONVERSION OF STATE BANK INTO ANOTHER FINANCIAL INSTITUTION. (a) Subject to Subtitle G, a state bank may act as necessary under 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 financial institution, as that term is defined by Section 201.101.

(b) The merger or conversion by the state bank must be made and approval of its board and shareholders must be obtained in

accordance with the Business Organizations Code as if the state bank were a filing entity and all other parties to the transaction, if any, were foreign entities, except as provided by rule. For purposes of this subsection, a conversion is considered a merger into the successor form of financial institution.

(c) The state bank does not cease to be a state bank 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 bank 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 meetings at which action was taken regarding the merger or conversion;

(3) the banking commissioner determines that:

(A) all deposit and other liabilities of the state bank are fully discharged, assumed, or otherwise retained by the successor form of financial institution;

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

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

(4) the bank has received a certificate of authority to do business as the successor financial institution.

(d) Section 32.304 applies to a proposed merger under this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.010, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 22, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 7, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 10, eff. June 14, 2013.

Sec. 32.502. CONVERSION OF FINANCIAL INSTITUTION INTO STATE BANK. (a) A financial institution, as that term is defined by Section 201.101, may apply to the banking commissioner for conversion into a state bank on a form prescribed by the banking commissioner and accompanied by any required fee if the institution follows the procedures prescribed by the laws of the United States, this state, another state, or another country governing the exit of the financial institution for the purpose of conversion into a state bank from the regulatory system applicable before the conversion. A banking association or limited banking association may convert its organizational form under this section.

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

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

(2) the financial institution has adequate capitalization for a state bank to engage in business at the same locations as the financial institution is engaged in business before the conversion;

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

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

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

(6) if the converting financial institution did not

have general depository powers and the state bank will have those powers, the factors set forth in Section 32.003(b) are satisfied.

(c) The banking commissioner may:

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

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

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

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

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

(2) demonstrate that all applicable law has been fully satisfied.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.010, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 23, eff. September 1, 2007.