

FINANCE CODE

TITLE 3. FINANCIAL INSTITUTIONS AND BUSINESSES

SUBTITLE A. BANKS

CHAPTER 33. OWNERSHIP AND MANAGEMENT OF STATE BANK

SUBCHAPTER A. TRANSFER OF OWNERSHIP INTEREST

Sec. 33.001. ACQUISITION OF CONTROL. (a) Except as otherwise expressly permitted by this subtitle, without the prior written approval of the banking commissioner a person may not directly or indirectly acquire a legal or beneficial interest in voting securities of a state bank or a corporation or other entity owning voting securities of a state bank if, after the acquisition, the person would control the bank.

(b) For purposes of this subchapter and except as otherwise provided by rules adopted under this subtitle, the principal shareholder of a state bank that directly or indirectly owns or has the power to vote a greater percentage of voting securities of the bank than any other shareholder is considered to control the bank.

(c) This subchapter does not prohibit a person from negotiating to acquire, but not acquiring, control of a state bank or a person that controls a 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. 24, eff. September 1, 2007.

Sec. 33.002. APPLICATION REGARDING ACQUISITION OF CONTROL.

(a) The proposed transferee in an acquisition of control of a state bank or of a person that controls a state bank must file an application for approval of the acquisition. The application must:

(1) be under oath and in a form prescribed by the banking commissioner;

(2) contain all information that:

(A) is required by rules adopted under this subtitle; or

(B) the banking commissioner requires in a

particular application as necessary to an informed decision to approve or reject the proposed acquisition; and

(3) be accompanied by any filing fee required by law.

(a-1) The banking commissioner shall promptly notify the applicant of the date the banking commissioner determines the application to be informationally complete and accepted for filing.

(b) If a person proposing to acquire voting securities in a transaction subject to this section includes any group of persons acting in concert, the information required by the banking commissioner may be required of each member of the group.

(c) Rules adopted under this subtitle may specify the confidential or nonconfidential character of information obtained by the banking commissioner under this section. In the absence of rules, information obtained by the banking commissioner under this section is confidential and may not be disclosed by the banking commissioner or any employee of the department except as provided by Subchapter D, Chapter 31.

(d) The applicant shall publish notice of the application, the date the application is accepted for filing, and the identity of the applicant and, if the applicant includes a group, the identity of each group member. The notice must be published in the form and frequency specified by the banking commissioner and in a newspaper of general circulation in the county in which the bank's home office is located, or in another publication or location as directed by the banking commissioner.

(e) The applicant may defer publication of the notice until not later than the 34th day after the date the application is accepted for filing if:

(1) the application is filed in contemplation of a public tender offer subject to 15 U.S.C. Section 78n(d)(1);

(2) the applicant requests confidential treatment and represents that a public announcement of the tender offer and the filing of appropriate forms with the Securities and Exchange Commission or the appropriate federal banking agency, as applicable, will occur within the period of deferral; and

(3) the banking commissioner determines that the public interest will not be harmed by the requested confidential

treatment.

(f) The banking commissioner may waive the requirement that a notice be published or permit delayed publication on a determination that waiver or delay is in the public interest. If publication of notice is waived under this subsection, the information that would be contained in a published notice becomes public information under Chapter 552, Government Code, on the 35th day after the date the application is accepted for filing.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 2.09, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 8, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 915 (S.B. 1400), Sec. 1, eff. September 1, 2017.

Sec. 33.003. HEARING AND DECISION ON ACQUISITION OF CONTROL. (a) Not later than the 60th day after the date the notice is published, the banking commissioner shall approve the application or set the application for hearing. If the banking commissioner sets a hearing, the department shall participate as the opposing party and the banking commissioner shall conduct the hearing and one or more prehearing conferences and opportunities for discovery as the banking commissioner considers advisable and consistent with governing law. A hearing held under this section is confidential and closed to the public.

(b) Based on the record, the banking commissioner may issue an order denying an application if:

(1) the acquisition would substantially lessen competition, restrain trade, result in a monopoly, or further a combination or conspiracy to monopolize or attempt to monopolize the banking industry in any part of this state, unless:

(A) the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served; and

(B) the proposed acquisition does not violate the

law of this state or the United States;

(2) the financial condition of the proposed transferee, or any member of a group comprising the proposed transferee, might jeopardize the financial stability of the bank being acquired;

(3) plans or proposals to operate, liquidate, or sell the bank or its assets are not in the best interests of the bank;

(4) the experience, ability, standing, competence, trustworthiness, and integrity of the proposed transferee, or any member of a group comprising the proposed transferee, are insufficient 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;

(5) the bank will not be solvent, have adequate capitalization, or comply with the law of this state after the acquisition;

(6) the proposed transferee has not furnished all information pertinent to the application reasonably required by the banking commissioner; or

(7) the proposed transferee is not acting in good faith.

(c) If the banking commissioner approves the application, the transaction may be consummated. If the approval is conditioned on a written commitment from the proposed transferee offered to and accepted by the banking commissioner, the commitment is enforceable against the bank and the transferee and is considered for all purposes an agreement under this subtitle.

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

Sec. 33.004. APPEAL FROM ADVERSE DECISION. (a) If a hearing has been held, the banking commissioner has entered an order denying the application, and the order has become final, the proposed transferee may appeal the order by filing a petition for judicial review.

(b) The filing of an appeal under this section does not stay the order of the banking commissioner.

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

Sec. 33.005. EXEMPTIONS. The following acquisitions are exempt from Section 33.001:

(1) an acquisition of securities in connection with the exercise of a security interest or otherwise in full or partial satisfaction of a debt previously contracted for in good faith and the acquiring person files written notice of acquisition with the banking commissioner before the person votes the securities acquired;

(2) unless the banking commissioner provides otherwise in writing, an acquisition of voting securities in any class or series by a controlling person who:

(A) was identified as a controlling person in a state bank in a prior application filed with and approved by the banking commissioner;

(B) has from the date of receipt of approval under this subchapter continuously held power to vote 25 percent or more of any class of voting securities of the state bank; or

(C) is considered to have from the date of receipt of approval under this subchapter continuously controlled the state bank under Section 33.001(b);

(3) an acquisition or transfer by operation of law, will, or intestate succession and the acquiring person files written notice of acquisition with the banking commissioner before the person votes the securities acquired;

(4) a transaction subject to Chapter 202 if:

(A) the acquiring bank holding company currently owns and controls a state bank; or

(B) the post-transaction controlling person is identified as the controlling person in a merger or other acquisition-related application filed with the banking commissioner concurrently with the submission required by Section 202.001; and

(5) a transaction exempted by the banking commissioner or by rules adopted under this subtitle because the transaction is not within the purposes of this subchapter or the regulation of the transaction is not necessary or appropriate to achieve the

objectives of this subchapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.011, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. [1823](#)), Sec. 4, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 989 (H.B. [3574](#)), Sec. 4, eff. June 18, 2023.

Sec. 33.006. OBJECTION TO OTHER TRANSFER. This subchapter does not prevent the banking commissioner from investigating, commenting on, or seeking to enjoin or set aside a transfer of voting securities that evidence a direct or indirect interest in a state bank, regardless of whether the transfer is governed by this subchapter, if the banking commissioner considers the transfer to be against the public interest.

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

Sec. 33.007. CIVIL ENFORCEMENT; CRIMINAL PENALTY. (a) If the banking commissioner believes that a person has violated or is about to violate this subchapter or a rule of the finance commission or order of the banking commissioner pertaining to this subchapter, the attorney general on behalf of the banking commissioner may apply to a district court of Travis County for an order enjoining the violation and for other equitable relief the nature of the case requires.

(b) A person who knowingly fails or refuses to file the application required by Section [33.002](#) commits an offense. An offense under this subsection is a Class A misdemeanor.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 21, eff. Sept. 1, 2001.

SUBCHAPTER B. BOARD AND OFFICERS

Sec. 33.101. VOTING SECURITIES HELD BY BANK. (a) Voting securities of a state bank held by the bank in a fiduciary capacity under a will or trust, whether registered in the bank's name or in

the name of its nominee, may not be voted in the election of directors or on a matter affecting the compensation of directors, officers, or employees of the bank in that capacity unless:

(1) under the terms of the will or trust, the manner in which the voting securities are to be voted may be determined by a donor or beneficiary of the will or trust and the donor or beneficiary makes the determination in the matter at issue;

(2) the terms of the will or trust expressly direct the manner in which the securities must be voted so that discretion is not vested in the bank as fiduciary; or

(3) the securities are voted solely by a cofiduciary that is not an affiliate of the bank, as if the cofiduciary were the sole fiduciary.

(b) Voting securities of a state bank that cannot be voted under this section are considered to be authorized but unissued for purposes of determining the procedures for and results of the affected vote.

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. 25, eff. September 1, 2007.

Sec. 33.102. BYLAWS. Each state bank shall adopt bylaws and may amend its bylaws for the purposes and according to the procedures provided by the Business Organizations Code.

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. 26, eff. September 1, 2007.

Sec. 33.103. BOARD OF DIRECTORS. (a) The board of a state bank must consist of not fewer than five but not more than 25 directors, a majority of whom are residents of this state. The principal executive officer of the bank is a member of the board. The principal executive officer acting in the capacity of a board member is the board's presiding officer unless the board elects a different presiding officer to perform the duties as

designated by the board.

(b) Unless the banking commissioner consents otherwise in writing, a person may not serve as director of a state bank if:

(1) the bank incurs an unreimbursed loss attributable to a charged-off obligation of or holds a judgment against:

(A) the person; or

(B) an entity that was controlled by the person at the time of funding and at the time of default on the loan that gave rise to the judgment or charged-off obligation;

(2) the person is the subject of an order described by Section 35.007(a); or

(3) the person has been convicted of a felony.

(c) If a state bank does not elect directors before the 61st day after the date of its regular annual meeting, the banking commissioner may appoint a conservator under Chapter 35 to operate the bank and elect directors, as appropriate. If the conservator is unable to locate or elect persons willing and able to serve as directors, the banking commissioner may close the bank for liquidation.

(d) A vacancy on the board that reduces the number of directors to fewer than five must be filled not later than the 30th day after the date the vacancy occurs. If the vacancy is not timely filled, the banking commissioner may appoint a conservator under Chapter 35 to operate the bank and elect a board of not fewer than five persons to resolve the vacancy. If the conservator is unable to locate or elect five persons willing and able to serve as directors, the banking commissioner may close the bank for liquidation.

(e) Before each term to which a person is elected to serve as a director of a state bank, the person shall submit an affidavit for filing in the minutes of the bank stating that the person, to the extent applicable:

(1) accepts the position and is not disqualified from serving in the position;

(2) will not violate or knowingly permit an officer, director, or employee of the bank to violate any law applicable to the conduct of business of the bank; and

(3) will diligently perform the duties of the position.

(f) The banking commissioner in the exercise of discretion may waive or reduce the residency requirements for directors set forth in Subsection (a).

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.0115, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 412, Sec. 2.10, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 27, eff. September 1, 2007.

Sec. 33.104. ADVISORY DIRECTOR. (a) An advisory director is not considered a director if the advisory director:

- (1) is not elected by the shareholders of the bank;
- (2) does not vote on matters before the board or a committee of the board;
- (3) is not counted for purposes of determining a quorum of the board or committee; and
- (4) provides solely general policy advice to the board.

(b) A state bank may not disclose to an advisory director confidential information pertaining to the bank or the bank's customers unless:

- (1) the board adopts a resolution that designates the advisory director as a person who is officially connected to the bank and that describes the purpose for disclosure of the information, which must be a reasonable business purpose; and
- (2) the disclosure is made under a written confidentiality agreement between the bank and the advisory director.

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. 28, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 5, eff. June 14, 2013.

Sec. 33.105. REQUIRED MONTHLY BOARD MEETING. (a) Except as provided by Subsection (b), the board of a state bank shall hold at least one regular meeting each month.

(b) On application by the board, the banking commissioner may grant the board approval to hold regular meetings on a less frequent basis than the period prescribed by Subsection (a). The commissioner may revoke or modify a prior approval granted under this subsection if the commissioner determines that more frequent regular meetings of the board are necessary to promote the safety and soundness of the bank.

(c) At each regular meeting the board shall review and approve the minutes of the prior meeting and review the operations, activities, and financial condition of the bank. The board may designate a committee from among its members to perform those duties and approve or disapprove the committee's report at each regular meeting. Each action of the board must be recorded in its minutes.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 14, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 6, eff. June 14, 2013.

Sec. 33.106. OFFICERS. (a) The board shall annually appoint the officers of the bank, who serve at the will of the board. Unless the banking commissioner consents otherwise in writing, a person may not serve as an officer of the state bank if:

(1) the person is the subject of an order described by Section 35.007(a); or

(2) the person has been convicted of a felony.

(b) The bank must have a principal executive officer primarily responsible for the execution of board policies and operation of the bank and an officer responsible for the maintenance and storage of all corporate books and records of the bank and for required attestation of signatures. Those positions

may not be held by the same person. The board may appoint other officers of the bank as the board considers necessary.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. [1401](#)), Sec. 5, eff. September 1, 2017.

Sec. 33.107. LIMITATION ON ACTION OF OFFICER OR EMPLOYEE IN RELATION TO ASSET OR LIABILITY. Unless expressly authorized by a resolution of the board recorded in its minutes, an officer or employee may not create or dispose of a bank asset or create or incur a liability on behalf of the bank.

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

Sec. 33.108. CRIMINAL OFFENSES. (a) An officer, director, employee, or shareholder of a state bank commits an offense if the person knowingly:

(1) conceals information or a fact, or removes, destroys, or conceals a book or record of the bank for the purpose of concealing information or a fact, from the banking commissioner or an agent of the banking commissioner; or

(2) removes, destroys, or conceals any book or record of the bank that is material to a pending or anticipated legal or administrative proceeding.

(b) An officer, director, or employee of a state bank commits an offense if the person:

(1) knowingly makes a false entry in a book, record, report, or statement of the bank; or

(2) violates or knowingly participates in a violation of, or permits another of the bank's officers, directors, or employees to violate, the prohibition on lending trust funds under Section [113.052](#), Property Code.

(c) An offense under this section is a felony of the third degree.

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. 29, eff.

September 1, 2007.

Sec. 33.109. TRANSACTIONS WITH MANAGEMENT AND AFFILIATES.

(a) Without the prior approval of a disinterested majority of the board recorded in the minutes or, if a disinterested majority cannot be obtained, the prior written approval of the banking commissioner, a state bank may not directly or indirectly:

(1) sell or lease an asset of the bank to an officer, director, or principal shareholder of the bank or of an affiliate of the bank; or

(2) purchase or lease an asset in which an officer, director, or principal shareholder of the bank or of an affiliate of the bank has an interest.

(b) An officer or director of the bank who knowingly participates in or permits a violation of this section commits an offense. An offense under this subsection is a felony of the third degree.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 2.11, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 30, eff. September 1, 2007.

SUBCHAPTER C. LIMITED BANKING ASSOCIATION

Sec. 33.201. LIABILITY OF PARTICIPANTS AND MANAGERS. (a) A participant or manager of a limited banking association is not liable for a debt, obligation, or liability of the limited banking association, including a debt, obligation, or liability under a judgment, decree, or order of court. A participant or a manager of a limited banking association is not a proper party to a proceeding by or against a limited banking association unless the object of the proceeding is to enforce a participant's or manager's right against or liability to a limited banking association.

(b) 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. 31, eff. September 1, 2007.

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

Sec. 33.204. MANAGEMENT OF LIMITED BANKING ASSOCIATION.

(a) Management of a limited banking association is vested in a board of managers elected by the participants as prescribed by the bylaws.

(b) A board of managers operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, and responsibilities, as a board of directors of a banking association, and a manager must meet the qualifications for a director under Section 33.103.

(c) The certificate of formation, bylaws, and participation agreement of a limited banking association may use "director" instead of "manager" and "board" instead of "board of managers."

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. 32, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 11, eff. June 14, 2013.

Sec. 33.206. INTEREST IN LIMITED BANKING ASSOCIATION; TRANSFERABILITY OF INTEREST. (a) The interest of a

participant in a limited banking association is the personal property of the participant and may be transferred as provided by the bylaws or the participation agreement.

(b) The bylaws or the participation agreement may not require the consent of any other participant in order for a participant to transfer participation shares, including voting rights.

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. 33, eff.

September 1, 2007.

Sec. 33.208. DISSOLUTION. The bylaws or the participation agreement may not require automatic termination, dissolution, or suspension of the limited banking association on the death, disability, bankruptcy, expulsion, or withdrawal of a participant, or on the happening of any other event other than the passage of time.

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. 34, eff. September 1, 2007.

Sec. 33.209. ALLOCATION OF PROFITS AND LOSSES. The profits and losses of a limited banking association may be allocated among the participants and among classes of participants as provided by the participation agreement. Without the prior written approval of the banking commissioner to use a different allocation method, the profits and losses must be allocated according to the relative interests of the participants as reflected in the certificate of formation and related documents filed with and approved by the banking commissioner.

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. 12, eff. June 14, 2013.

Sec. 33.210. DISTRIBUTIONS. Subject to Section 32.103, distributions of cash or other assets of a limited banking association may be made to the participants as provided by the participation agreement. Without the prior written approval of the banking commissioner to use a different distribution method, distributions must be made to the participants according to the relative interests of the participants as reflected in the certificate of formation and related documents filed with and approved by the banking commissioner.

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. 13, eff. June 14, 2013.

Sec. 33.211. APPLICATION OF OTHER PROVISIONS TO LIMITED BANKING ASSOCIATIONS. For purposes of the provisions of Subtitle A and this subtitle other than this subchapter, as the context requires:

(1) a manager is considered to be a director and the board of managers is considered to be the board of directors;

(2) a participant is considered to be a shareholder;

(3) a participation share is considered to be a share;

and

(4) a distribution is considered to be a dividend.

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. 35, eff. September 1, 2007.