

FINANCE CODE

TITLE 3. FINANCIAL INSTITUTIONS AND BUSINESSES

SUBTITLE C. SAVINGS BANKS

CHAPTER 96. SUPERVISION AND REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 96.001. GENERAL DUTIES. The Department of Savings and Mortgage Lending and the commissioner shall regulate savings banks and subsidiaries of savings banks operating under this subtitle.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.039, eff. September 1, 2007.

Sec. 96.002. ADOPTION OF RULES. (a) The finance commission may adopt rules necessary to supervise and regulate savings banks and to protect public investment in savings banks, including rules relating to:

(1) the minimum amounts of capital required to incorporate and operate as a savings bank, which may not be less than the amounts required of corresponding national banks;

(2) the fees and procedures for processing, hearing, and deciding applications filed with the commissioner or the Department of Savings and Mortgage Lending under this subtitle;

(3) the books and records that a savings bank is required to keep and the location at which the books and records are required to be maintained;

(4) the accounting principles and practices that a savings bank is required to observe;

(5) the conditions under which records may be copied or reproduced for permanent storage before the originals are destroyed;

(6) the form, content, and time of publication of statements of condition;

(7) the form and content of any report that a savings bank is required to prepare and publish or file under this chapter;

(8) the manner in which assets, liabilities, and transactions in general are to be described when entered in the books of a savings bank, so that the entry accurately describes the subject matter of the entry;

(9) the conditions under which the commissioner may require an asset to be charged off or reserves established by transfer from surplus or paid-in capital because of depreciation of or overstated value of the asset;

(10) the change of control of a savings bank;

(11) the conduct, management, and operation of a savings bank;

(12) the withdrawable accounts, bonuses, plans, and contracts for savings programs;

(13) the merger, consolidation, reorganization, conversion, and liquidation of a savings bank;

(14) the establishment of an additional office or the change of office location or name of a savings bank;

(15) the requirements for a savings bank's holding companies, including those relating to:

(A) registration and periodic reporting of a holding company with the commissioner; and

(B) transactions between a holding company, an affiliate of a holding company, or a savings bank; and

(16) the powers of a savings bank to make loans and investments that contain provisions reasonably necessary to ensure that a loan made by a savings bank is consistent with sound lending practices and that the savings bank's investment will promote the purposes of this subtitle, including provisions governing:

(A) the type of loans and the conditions under which a savings bank may originate, make, or sell loans;

(B) the conditions under which a savings bank may purchase or participate in a loan made by another lender;

(C) the conditions for the servicing of a loan for another lender;

(D) the conditions under which a savings bank may lend money on the security of a loan made by another person;

(E) the conditions under which a savings bank may

pledge loans held by it as collateral for borrowing by the savings bank;

(F) the conditions under which a savings bank may invest in securities and debt instruments;

(G) the documentation that a savings bank must have in its files at the time of funding or purchase of a loan, an investment, or a participation in a loan;

(H) the form and content of statements of expenses and fees and other charges that are paid by a borrower or that a borrower is obligated to pay;

(I) the title information that must be maintained;

(J) the borrower's insurance coverage of property securing a loan;

(K) an appraisal report;

(L) the financial statement of a borrower;

(M) the fees or other compensation that may be paid to a person in connection with obtaining a loan for a savings bank, including an officer, director, employee, affiliated person, consultant, or third party;

(N) the conditions under which the savings bank may advance money to pay a tax, assessment, insurance premium, or other similar charge for the protection of the savings bank's interest in property securing the savings bank's loans;

(O) the terms under which a savings bank may acquire and deal in real property;

(P) the valuation on a savings bank's books of real property held by the savings bank;

(Q) the terms governing the investment by a savings bank in a subsidiary, the powers that may be exercised by a subsidiary, and the activities that may be engaged in by a subsidiary; and

(R) any other matter considered necessary to administer each type of transaction.

(b) A savings bank or its subsidiary may not engage in a transaction in violation of a rule adopted under this subtitle.

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

by Acts 2001, 77th Leg., ch. 867, Sec. 61, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.040, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 11, eff. September 1, 2013.

#### SUBCHAPTER B. EXAMINATIONS AND REPORTS

Sec. 96.051. ANNUAL AUDIT. (a) Not later than the 90th day after the date its fiscal year closes, a savings bank shall obtain an audit by an independent accounting firm that is a member of the American Institute of Certified Public Accountants or its successor.

(b) A copy of the audit and all correspondence reasonably related to the audit shall be provided to the commissioner.

(c) The finance commission may adopt rules as necessary to implement this section.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 464, Sec. 15(4), eff. September 1, 2013.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 62, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 15(4), eff. September 1, 2013.

Sec. 96.053. REPORTS. (a) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 464, Sec. 15(5), eff. September 1, 2013.

(b) A savings bank shall make any report the commissioner may require to administer and enforce this chapter. A report under this section must be:

(1) in the form and manner the commissioner prescribes; and

(2) filed on the date the commissioner prescribes.

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

Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.19, eff.

September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. [1008](#)), Sec. 12, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. [1008](#)), Sec. 15(5), eff. September 1, 2013.

Sec. 96.054. EXAMINATIONS. (a) The commissioner shall periodically examine the affairs of each savings bank and its subsidiaries and the transactions of any holding company that are related to the savings bank subsidiaries of the holding company.

(b) An examination under this section may be performed in conjunction with an examination by the Federal Deposit Insurance Corporation or another federal depository institutions regulatory agency having jurisdiction over a savings bank. The commissioner may accept an examination made by an appropriate banking agency as a substitute for an examination required by this section.

(c) On completion of a report, a copy of an examination conducted under this section shall be furnished promptly to the savings bank.

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

Sec. 96.055. ADDITIONAL EXAMINATIONS. (a) The commissioner at the saving bank's cost may perform an additional examination or audit or devote extraordinary attention to a savings bank's affairs if the commissioner determines the conditions of the savings bank justify the examination, audit, or attention.

(b) On completion of a report, a copy of an examination or audit report conducted under this section shall be furnished promptly to the savings bank.

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

Sec. 96.0551. REGULATION AND EXAMINATION OF CERTAIN RELATED ENTITIES. (a) In this section, "state savings bank" has the meaning assigned by Section [31.002](#).

(b) The commissioner may regulate and examine, to the same extent as if the services or activities were performed by a state savings bank on its own premises:

(1) the activities of a state savings bank affiliate;  
and

(2) the services or activities of a third-party service provider that a state savings bank or state savings bank affiliate has contracted for or otherwise arranged to be performed on behalf of the state savings bank or state savings bank affiliate.

(c) The commissioner may collect a fee from an examined third-party service provider or affiliate in connection with each examination to cover the cost of the examination or may collect that fee from the state savings banks that use the examined third-party service provider.

(d) For purposes of this section, a third-party service provider or state savings bank affiliate does not include a company or firm in which ownership or membership is limited to individuals and conditioned by law on the existence and maintenance of professional licensing.

(e) To promote regulatory efficiency, if, in the preceding 24 months, a third-party service provider or affiliate has been examined by a federal or state financial services regulatory agency or by a member agency of the Federal Financial Institutions Examination Council, or its successor agency, the commissioner may accept the results of that examination instead of conducting the commissioner's own examination of the third-party service provider or affiliate. Nothing in this subsection shall be construed as limiting or restricting the commissioner from participating in an examination of a third-party service provider or affiliate conducted by a federal or state financial services regulatory agency or by a member agency of the Federal Financial Institutions Examination Council, or its successor agency.

(f) A third-party service provider that refuses to submit to examination or to pay an assessed fee for examination under this section is subject to an enforcement action under Chapter 96. With respect to a third-party service provider's refusal to submit to examination, the commissioner may notify all state savings banks of the refusal and warn that continued use of the third-party service provider may constitute an unsafe and unsound banking practice.

Added by Acts 2021, 87th Leg., R.S., Ch. 963 (S.B. 1900), Sec. 2,

eff. September 1, 2021.

Sec. 96.056. ACCESS TO BOOKS AND RECORDS. The commissioner, a deputy commissioner, or an examiner or auditor of the commissioner shall be given free access to:

(1) the books and records of a savings bank or a subsidiary or holding company of a savings bank; and

(2) the books and records relating to a savings bank's business kept by an officer, agent, or employee of the savings bank or the subsidiary or holding company of the savings bank.

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

Sec. 96.057. SUBPOENA; ADMINISTRATION OF OATH OR AFFIRMATION. (a) In an examination conducted under this subchapter, the commissioner, the deputy commissioner, or an examiner or auditor of the commissioner may:

(1) subpoena witnesses;

(2) administer an oath or affirmation to a person, including a director, officer, agent, or employee of a savings bank or a savings bank's subsidiary or holding company; or

(3) require and compel by subpoena the production of documents, including records, books, papers, and contracts.

(b) The commissioner may apply to a district court in Travis County for an order requiring a person to obey a subpoena or to appear or answer questions in connection with the examination.

(c) The court shall issue an order under Subsection (b) if the court finds good cause to issue the subpoena or to take testimony.

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

#### SUBCHAPTER C. SUPERVISORY INTERVENTION

Sec. 96.101. INTERVENTION FOR VIOLATIONS AND UNSAFE AND UNSOUND PRACTICES. (a) The commissioner may intervene in the affairs of a savings bank if the savings bank or a person who participates in the affairs of the savings bank or a subsidiary or holding company of the savings bank:

(1) engages in or is about to engage in an unsafe and unsound practice in conducting the affairs of the savings bank; or

(2) violates or is about to violate:

(A) the articles of incorporation or bylaws of the savings bank;

(B) a law or supervisory order applicable to the savings bank; or

(C) a condition that the commissioner or the finance commission has imposed on the savings bank by written order, directive, or agreement.

(b) The commissioner may intervene in the affairs of a savings bank if a person who participates in the affairs of the savings bank or a subsidiary or holding company of the savings bank violates or is about to violate an order or instruction of the commissioner or a conservator or supervisor in charge of the savings bank's affairs.

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

Sec. 96.102. INTERVENTION FOR FILING INAPPROPRIATE INFORMATION. The commissioner may intervene in the affairs of a savings bank if the savings bank or a person who participates in the affairs of the savings bank or a subsidiary or holding company of the savings bank files materially false or misleading information in a filing required by Subchapter L, Chapter 92.

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

Sec. 96.103. INTERVENTION FOR ACTIVITY RESULTING IN ACTUAL OR POTENTIAL FINANCIAL LOSS. (a) The commissioner may intervene in the affairs of a savings bank if a person who participates in the affairs of the savings bank or a subsidiary or holding company of the savings bank commits or is about to commit:

(1) a fraudulent or criminal act in conducting the affairs that may cause the savings bank or a subsidiary of the savings bank to become or be in danger of becoming insolvent;

(2) an act that threatens immediate or irreparable harm to the public or the savings bank, a subsidiary of the savings bank, or the deposit account holders or creditors of the savings



bank; or

(3) a breach of fiduciary duty that results in actual or probable substantial financial losses or other damages to the savings bank or a subsidiary of the savings bank or that would seriously prejudice the interest of the deposit account holders or holders of other security issued by the savings bank.

(b) The commissioner may intervene in the affairs of a savings bank if the savings bank:

(1) is insolvent;

(2) is in imminent danger of insolvency; or

(3) makes or is about to make:

(A) a loan the value of the security for which is materially overstated; or

(B) an investment the market value of which is materially overstated.

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

Sec. 96.104. INTERVENTION RELATING TO EXAMINATION OF AFFAIRS. (a) The commissioner may intervene in the affairs of a savings bank if a person who participates in the affairs of the savings bank or a subsidiary or holding company of the savings bank:

(1) refuses or is about to refuse to submit to interrogation under oath by the commissioner or the commissioner's agent with respect to the savings bank's affairs; or

(2) materially alters, conceals, removes, or falsifies or is about to materially alter, conceal, remove, or falsify a book or record of the savings bank or a subsidiary or holding company of the savings bank.

(b) The commissioner may intervene in the affairs of a savings bank if the savings bank:

(1) fails to maintain books and records from which the true financial condition of the savings bank or the state of the savings bank's affairs can be determined; or

(2) refuses to direct a person having possession of the books, papers, records, or accounts of the savings bank or the savings bank's subsidiary to permit the commissioner or the commissioner's representative to examine those documents or

accounts.

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

Sec. 96.105. TEMPORARY SUPERVISORY ORDER. (a) If the commissioner has reasonable cause to believe that one or more grounds for intervention under Sections 96.101-96.104 exist or are imminent, the commissioner may issue without notice and hearing one or more of the following types of temporary supervisory orders to correct and eliminate the grounds for supervisory action:

(1) an order to cease and desist from continuing a particular action, an order to take affirmative action, or both;

(2) an order suspending or prohibiting a person who participates in the affairs of the savings bank from further participating in the affairs of the savings bank or another savings bank;

(3) an order requiring divestiture of control of a savings bank obtained under Subchapter L, Chapter 92;

(4) an order requiring a person who participates in the affairs of the savings bank or another savings bank to forfeit and pay an administrative penalty in an amount of not more than \$25,000; or

(5) an order placing the affairs of the savings bank under the control of a conservator designated in the order, who may take possession and control of the books, records, assets, liabilities, and business of the savings bank and manage the savings bank under the direction of the commissioner.

(b) An order under this section:

(1) must contain a reasonably detailed statement of the facts on which the order is based; and

(2) takes effect when issued.

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

Sec. 96.106. SERVICE OF TEMPORARY SUPERVISORY ORDER. (a) A temporary supervisory order may be served by personal delivery by an agent of the commissioner or by certified or registered mail.

(b) Service is complete when an officer or director of the savings bank receives the order.

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

Sec. 96.107. HEARING ON TEMPORARY SUPERVISORY ORDER; FINAL ORDER. (a) A temporary supervisory order issued under Section 96.105 becomes final and unappealable on the 15th day after the date on which it is issued unless before that day the savings bank or a person affected by the order requests a hearing before the commissioner to determine whether the order should be vacated, made permanent, or modified.

(b) The commissioner shall set the hearing to be held not earlier than the 10th day or later than the 30th day after the date of the request. The hearing must be held at the offices of the Department of Savings and Mortgage Lending.

(c) After the hearing, the commissioner may enter a final order that vacates the temporary order or makes the temporary order permanent in its original or a modified form that is consistent with the facts found by the commissioner.

(d) The commissioner shall enter the final order not later than the 15th day after the date on which the hearing is completed.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.041, eff. September 1, 2007.

Sec. 96.108. PLAN OF OPERATION OF SAVINGS BANK AFTER ORDER OF TEMPORARY CONSERVATORSHIP. (a) Before or during a hearing under Section 96.107 on a temporary supervisory order placing a savings bank under the control of a conservator, the board of the savings bank may present to the commissioner a plan to continue the operation of the savings bank in a manner that will correct or eliminate the grounds for the order.

(b) If the commissioner approves the plan or a modification of the plan, the commissioner shall vacate the order and place the savings bank under conservatorship, conditioned on the implementation and diligent prosecution of the plan.

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

Sec. 96.109. ENFORCEMENT OF SUPERVISORY ORDER. (a) The commissioner, after giving notice, may assess against a savings bank or another person designated in a final supervisory order who violates the order, or both, an administrative penalty of not more than \$1,000 each for each day of the violation. The savings bank may not reimburse or indemnify a person for any part of the penalty.

(b) In addition to any other remedy provided by law, the commissioner may institute in a district court in Travis County:

(1) a suit for injunctive relief to stop or prevent a violation of a supervisory order; or

(2) a suit for injunctive relief and to collect the administrative penalty.

(c) A bond is not required of the commissioner with respect to injunctive relief granted under this section.

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

Sec. 96.110. STAY OF SUPERVISORY ORDER. (a) A temporary supervisory order may not be stayed pending a hearing unless the commissioner orders a stay.

(b) A final supervisory order may not be stayed pending judicial review unless the reviewing court orders a stay for good cause.

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

Sec. 96.111. DISCLOSURE OF INFORMATION IN SUPERVISORY ORDER; CONFIDENTIALITY. (a) When a supervisory order is issued under this chapter, the commissioner shall report the existence of the order promptly to the finance commission but shall maintain the confidentiality of the content of the order.

(b) Except as provided by Subsection (c) or (d), information contained in a temporary or final supervisory order or a notice, correspondence, or other record relating to the order is confidential.

(c) The commissioner, for good reason as determined by the commissioner, may disclose the information described by Subsection (b) in a hearing or judicial proceeding under Section [96.107](#), [96.109](#), or [96.110](#) or in a proceeding to assert a defense under

Section 96.403.

(d) The commissioner may disclose the information described by Subsection (b) to a department, agency, or instrumentality of this or another state or the United States if the commissioner determines that disclosure is necessary or proper to enforce the laws of this or another state or the United States.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 13, eff. September 1, 2013.

#### SUBCHAPTER D. CONSERVATORSHIP

Sec. 96.151. PLACEMENT OF SAVINGS BANK UNDER CONSERVATORSHIP. If the commissioner does not approve a plan to continue the operation of a savings bank under Section 96.108, the conservator shall continue to manage the affairs of the savings bank unless the temporary conservatorship order is modified or vacated:

- (1) by order of the commissioner; or
- (2) as a result of judicial review.

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

Sec. 96.152. DUTIES OF CONSERVATOR. (a) The conservator and any deputy or assistant conservator appointed by the commissioner, under the direction and supervision of the commissioner, shall:

(1) take possession and control of the books, records, property, assets, liabilities, and business of the savings bank; and

(2) conduct the business and affairs of the savings bank.

(b) The conservator shall:

(1) remove the causes and conditions that made the conservatorship necessary; and

(2) report to the commissioner as required by the commissioner.

(c) The conservator shall preserve, protect, and recover the assets or property of the savings bank, including a claim or cause of action that belongs to or may be asserted by the savings bank. The conservator may deal with that property in the capacity of conservator.

(d) The conservator may file, prosecute, or defend a suit brought by or against the savings bank if the conservator considers it necessary to protect the interested party or property affected by the suit.

(e) A suit filed by the conservator under Subsection (c) must be brought in Travis County.

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

Sec. 96.153. TERM OF CONSERVATOR. The conservator shall serve until the purposes of the conservatorship are accomplished.

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

Sec. 96.154. TRANSFER OF MANAGEMENT OF REHABILITATED SAVINGS BANK. If the savings bank is rehabilitated to the satisfaction of the commissioner, the conservator shall return the management of the savings bank to the savings bank's board under terms that are reasonable and necessary to prevent a recurrence of the conditions that created the need for conservatorship.

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

Sec. 96.155. SCOPE OF AUTHORITY OF OTHER PERSONS DURING CONSERVATORSHIP. During the conservatorship, a person who participates in the affairs of the savings bank shall act according to the conservator's instructions and may exercise only the authority that the conservator expressly grants.

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

Sec. 96.156. LIMITING ORDER DURING CONSERVATORSHIP. (a) During a conservatorship, the commissioner by order may impose limitations on withdrawals from deposit accounts if the commissioner determines that the interests of deposit account holders and creditors of the savings bank are best protected by the

limitations.

(b) An order under this section:

(1) must detail the limitations imposed;

(2) must contain a reasonably detailed statement of the facts on which the order is based; and

(3) becomes effective when served on the conservator.

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

Sec. 96.157. SERVICE OF LIMITING ORDER. (a) A limiting order may be served by personal delivery by an agent of the commissioner or by certified or registered mail.

(b) Service is complete when the conservator receives the order.

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

Sec. 96.158. EFFECT OF LIMITING ORDER. (a) Immediately after receiving a limiting order, the conservator shall post a copy of the order at the main entrance of the savings bank.

(b) A deposit account withdrawal that violates a limiting order may not be permitted after the conservator posts the order.

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

Sec. 96.159. HEARING ON LIMITING ORDER; FINAL ORDER. (a) The limiting order becomes final and unappealable on the 15th day after the date on which the order is posted as provided by Section [96.158](#) unless before that day at least 20 percent of the total number of deposit account holders affected by the order request a hearing before the commissioner to determine whether the order should be vacated, made permanent, or modified.

(b) The commissioner shall set the hearing to be held not earlier than the 10th day or later than the 30th day after the date of the request. The hearing must be held at the offices of the Department of Savings and Mortgage Lending.

(c) After the hearing, the commissioner may issue a final order that vacates the limiting order or makes the limiting order permanent in its original or a modified form consistent with the facts found by the commissioner.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.042, eff. September 1, 2007.

Sec. 96.160. STAY OF LIMITING ORDER. (a) A limiting order may not be stayed pending a hearing unless the commissioner orders a stay.

(b) A final order may not be stayed pending judicial review unless the reviewing court orders a stay for good cause.

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

Sec. 96.161. COST OF CONSERVATORSHIP. (a) The commissioner shall determine the cost of the conservatorship.

(b) The cost of the conservatorship shall be paid from the savings bank's assets as the commissioner directs.

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

Sec. 96.162. VENUE. A suit filed against a savings bank or its conservator while a conservatorship order is in effect must be brought in Travis County.

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

#### SUBCHAPTER E. VOLUNTARY SUPERVISORY CONTROL

Sec. 96.201. PLACEMENT OF SAVINGS BANK UNDER VOLUNTARY SUPERVISORY CONTROL. (a) A savings bank's board may consent to the commissioner's placement of the savings bank under supervisory control.

(b) The commissioner may appoint the supervisor and one or more deputy supervisors.

(c) Supervisory control continues until the conditions for which the supervisory control was imposed are corrected.

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

Sec. 96.202. POWERS OF SUPERVISORS. A supervisor or deputy supervisor has the powers of a conservator under Subchapter D and



any other power established by agreement between the commissioner and the savings bank's board of directors.

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

Sec. 96.203. COST OF SUPERVISORY CONTROL. The cost of the supervisory control of a savings bank shall be set by the commissioner and paid by the savings bank.

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

#### SUBCHAPTER F. CLOSING

Sec. 96.251. CLOSING OF SAVINGS BANK BY BOARD RESOLUTION. A savings bank's board, by resolution and with the commissioner's consent, may close the savings bank and tender to the commissioner for disposition as provided by this subchapter the assets and all the affairs of the savings bank.

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

Sec. 96.252. CLOSING OF SAVINGS BANK BY COMMISSIONER'S ORDER. The commissioner or the commissioner's representative may close a savings bank if the commissioner determines after an examination that:

(1) the interests of the deposit account holders and creditors of the savings bank are jeopardized because of:

(A) the savings bank's insolvency or imminent insolvency; or

(B) a substantial dissipation of the savings bank's assets or earnings because of a violation of a law or an unsafe or unsound practice; and

(2) it is in the best interests of the deposit account holders and creditors to close the savings bank and liquidate the savings bank's assets.

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

Sec. 96.253. EFFECT OF CLOSING. (a) On closing a savings bank under this subchapter, the commissioner may:

(1) liquidate the savings bank as provided by

Subchapter G; or

(2) tender the savings bank's assets and all the savings bank's affairs to the Federal Deposit Insurance Corporation and appoint the Federal Deposit Insurance Corporation as receiver or liquidating agent to act in accordance with this chapter or federal law.

(b) The Federal Deposit Insurance Corporation, on accepting the tender and appointment prescribed by Subsection (a)(2), may:

(1) act without bond or other security as to the appointment; and

(2) without court supervision, exercise any right, power, or privilege provided by the laws of this state to a receiver or liquidating agent, as applicable, and any applicable right, power, or privilege available under federal law.

(c) On acceptance of the appointment prescribed by Subsection (a)(2), possession of and title to all the assets, business, and property of the savings bank pass to the Federal Deposit Insurance Corporation without the execution of any instrument transferring title or right of use.

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

Sec. 96.254. HEARING ON COMMISSIONER'S ORDER. (a) Not later than the second day, excluding legal holidays, after the date on which the commissioner closes a savings bank under Section [96.252](#), the savings bank, by resolution of its board, may sue in a district court of Travis County to prohibit the commissioner from taking further action under this subchapter.

(b) The court may restrain the commissioner from taking further action until a hearing on the suit is held. If the court restrains the commissioner, the court shall instruct the commissioner to hold the assets and affairs of the savings bank in the commissioner's possession until disposition of the suit. On receipt of this instruction, the commissioner shall refrain from taking further action, other than a necessary or proper action approved by the court to prevent loss or depreciation in the value of the assets.

(c) The court as soon as possible shall hear the suit and

shall enter a judgment prohibiting or refusing to prohibit the commissioner from proceeding under this subchapter.

(d) The commissioner, regardless of the judgment entered by the court or any supersedeas bond filed, retains possession of the savings bank's assets until final disposition of any appeal of the judgment.

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

#### SUBCHAPTER G. LIQUIDATION

Sec. 96.301. LIQUIDATION OF SAVINGS BANK. (a) If the commissioner doubts that a savings bank subject to a conservatorship order can be rehabilitated, the commissioner may close the savings bank as provided by Subchapter F or set a hearing to determine whether the savings bank should be liquidated. Not later than the 10th day before the hearing date, notice of the hearing shall be given by certified mail to the officers and directors of the savings bank and by publication in a newspaper of general circulation in the county in which the principal office of the savings bank is located.

(b) If the commissioner closes a savings bank or finds after a hearing under Subsection (a) that the savings bank cannot be rehabilitated and that it is in the public interest and the best interests of the deposit account holders and creditors of the savings bank that the bank be closed and its assets liquidated, the commissioner by liquidation order may appoint a liquidating agent and dissolve the savings bank.

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

#### Sec. 96.302. REMOVAL OR REPLACEMENT OF LIQUIDATING AGENT.

(a) The commissioner, with or without cause, may remove a liquidating agent and appoint another agent.

(b) If a liquidating agent resigns, dies, or otherwise becomes unable to serve, the commissioner shall promptly appoint another agent.

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

Sec. 96.303. DUTIES OF LIQUIDATING AGENT. (a) Under the commissioner's supervision, the liquidating agent shall:

(1) receive and take possession of the books, records, assets, and property of the savings bank;

(2) sell, enforce collection of, and liquidate the assets and property of the savings bank;

(3) sue in the name of the liquidating agent or the savings bank;

(4) defend an action brought against the liquidating agent or the savings bank;

(5) receive, examine, and pass on a claim brought against the savings bank, including a claim of a depositor;

(6) make distributions to and pay creditors, deposit account holders, shareholders, and members of the savings bank as their interests appear;

(7) from time to time make a ratable liquidation dividend on claims that have been proved to the satisfaction of the liquidating agent or that have been adjusted by a court;

(8) after the savings bank's assets have been liquidated, make further liquidation dividends on claims previously proved or adjusted; and

(9) execute documents and perform any other action that the liquidating agent considers necessary or desirable for the liquidation.

(b) For purposes of making a further liquidation dividend under Subsections (a)(7) and (8), the liquidating agent may accept the statement of an amount due a claimant as shown on the savings bank's books and records instead of a formal proof of claim on the claimant's behalf.

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

Sec. 96.304. NOTICE. (a) Under the commissioner's supervision, the liquidating agent shall give notice to creditors and deposit account holders directing them to present and prove their claims and requiring them to file a written proof of claim at the address designated in the notice.

(b) The notice shall be published once a week for three

successive weeks in a newspaper of general circulation in each county in which the savings bank maintained an office or branch to transact business on the date the savings bank ceased unrestricted operations.

(c) Not later than the 30th day after the date on which the notice is first published, the liquidating agent shall mail a similar notice to each depositor and creditor named in the books of the savings bank at the address shown in those books.

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

Sec. 96.305. PRESENTATION OF CLAIM. (a) To be entitled to priority, each person asserting a claim against a savings bank being liquidated under this subchapter must present the claim in writing to the commissioner or the liquidating agent, at the address designated in the notice under Section 96.304 on or before the last day of the 18th month after the date the notice is first published.

(b) The claim must:

(1) contain a statement of the facts supporting the claim;

(2) set out any right of payment priority or other specific right asserted by the claimant; and

(3) be signed and sworn to by the claimant.

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

Sec. 96.306. PRIORITY OF CLAIMS. When a savings bank is liquidated, claims for payment have the same priority that similar claims have when a federal savings bank is liquidated under federal law.

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

Sec. 96.307. ACTION ON CLAIM. (a) Within three months after the date of receipt of a claim against a savings bank being liquidated, the liquidating agent shall approve or reject the claim in whole or in part unless that period is extended by written agreement with the claimant.

(b) A liquidating agent who approves the claim or a part of

the claim shall classify the claim and enter the claim and the action taken in a claim register.

(c) A liquidating agent who rejects the claim in whole or in part, or who denies a right of payment priority or any other right asserted by the claimant, shall notify the claimant of the action by registered mail.

(d) An approved claim presented after the declaration and payment of any dividend and on or before the last day of the 18th month after the date on which notice is first published under Section 96.304 qualifies to participate in dividends previously paid before an additional dividend is declared. A claim that is presented after that period does not qualify to participate in a dividend or distribution of assets until all approved claims presented during the period are fully paid.

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

Sec. 96.308. HEARING ON CLAIM; APPEAL OF ADVERSE DETERMINATION OF CLAIM. (a) A claimant may appeal an adverse determination of a claim by filing suit on the claim in a district court of Travis County within three months after the date on which notice is mailed under Section 96.307.

(b) The determination on a claim becomes final on the expiration of the period prescribed by Subsection (a) if suit is not filed in accordance with that subsection.

(c) Review by a district court under Subsection (a) is by trial de novo.

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

Sec. 96.309. PAYMENT OF FINAL DIVIDEND. (a) The liquidating agent may not pay a final dividend before the first day of the 19th month after the date notice is first published under Section 96.304.

(b) The liquidating agent shall declare and pay a final dividend after:

(1) the prohibitory period prescribed by Subsection (a) expires; and

(2) the liquidating agent liquidates each asset of the

savings bank capable of being liquidated or receives sufficient money from the liquidation to:

- (A) pay the costs of liquidation;
- (B) pay all claims that have been presented and approved; and
- (C) leave money available to pay all nonclaiming deposit account holders and creditors of the savings bank.

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

Sec. 96.310. DEPOSIT OF MONEY BY LIQUIDATING AGENT. The liquidating agent shall deposit all unclaimed dividends and all money available for nonclaiming deposit account holders and creditors in one or more state-chartered financial institutions for the benefit of the deposit account holders and creditors entitled to the dividends or money.

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

Sec. 96.311. PAYMENT OF NONCLAIMING DEPOSIT ACCOUNT HOLDERS AND CREDITORS. (a) Except as provided by Subsection (b), the liquidating agent, on demand, shall pay a deposit account holder or creditor of the savings bank who does not make a claim under Section 96.305 any amount held by the liquidating agent for the benefit of the deposit account holder or creditor.

(b) If the liquidating agent has a doubt about the identity of a claimant or the claimant's right to the money, the liquidating agent shall reject the claim and notify the claimant by registered mail.

(c) The liquidating agent's rejection of a claim becomes final if the claimant does not file suit against the liquidating agent to recover money in a district court of Travis County within three months after the date on which the notice is mailed.

(d) A suit under Subsection (c) is an action in rem. Judgment is binding on all persons interested in the money.

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

Sec. 96.312. COST OF LIQUIDATION. (a) The commissioner shall determine the cost of the liquidation.

(b) The cost of liquidation shall be paid from the savings bank's assets as the commissioner directs.

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

Sec. 96.313. FINAL REPORT. After paying a final dividend as provided by Section 96.309 and performing any necessary or proper action in liquidating the savings bank's assets for the benefit of the deposit account holders and creditors of the savings bank, the liquidating agent shall file with the commissioner a final report of the liquidation.

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

Sec. 96.314. CONTINUED EXISTENCE OF SAVINGS BANK FOLLOWING LIQUIDATION. For the purpose of adjusting and settling claims not disposed of during the liquidation, the savings bank continues to exist until the third anniversary of the date on which the liquidation order is issued.

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

Sec. 96.315. SPECIAL LIQUIDATING AGENT. At the completion of the liquidation, the commissioner may appoint a special liquidating agent if necessary to adjust and settle undisposed claims.

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

Sec. 96.316. CLOSING OF LIQUIDATION; ORDER AND LIABILITY.

(a) The liquidating agent shall certify the completion of the liquidation to the commissioner, who shall then issue an order closing the liquidation.

(b) After the closing order, the commissioner and the liquidating agent are discharged from any further duty or liability in connection with the administration of the savings bank's affairs.

(c) After the closing order, a person does not have a claim, suit, or action against the commissioner or the liquidating agent, individually or in an official capacity, except a suit to recover an unclaimed deposit as provided by this subchapter.



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

Sec. 96.317. ADMINISTRATIVE PROCEDURE. The procedures for a contested case hearing under Chapter 2001, Government Code, apply to a hearing set by the commissioner under this subchapter.

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

#### SUBCHAPTER H. CONFIDENTIALITY

Sec. 96.351. DISCLOSURE BY DEPARTMENT PROHIBITED. Except as otherwise provided by this subtitle or a rule adopted under this subtitle, the following are confidential and may not be disclosed by the commissioner or an examiner, supervisor, conservator, liquidator, inspector, deputy, or assistant clerk or other employee of the Department of Savings and Mortgage Lending who is appointed or acting under this subtitle:

(1) information, regardless of the circumstances under which the information is obtained, regarding a financial institution or a shareholder, participant, officer, director, manager, affiliate, or service provider of a financial institution, other than information in a public statement or the public portion of a call report or profit and loss statement; and

(2) all related files and records of the department.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.043, eff. September 1, 2007.

Sec. 96.352. DISCLOSURE TO OTHER AGENCIES. This subchapter does not prevent the proper exchange of information relating to savings banks with a representative of a regulatory authority of another state or any other department, agency, or instrumentality of this or another state or the United States if the commissioner determines the disclosure of the information is necessary or proper to enforce the laws of this or another state or the United States.

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

Sec. 96.353. OTHER DISCLOSURE PROHIBITED. (a)  
Confidential information that is provided to a financial institution or an affiliate or service provider of a financial institution, whether in the form of a report of examination or otherwise, is the confidential property of the Department of Savings and Mortgage Lending.

(b) The information may not be made public or disclosed by the recipient or by an officer, director, manager, employee, or agent of the recipient to a person not officially connected to the recipient as officer, director, employee, attorney, auditor, or independent auditor, except as authorized by a rule adopted under this subchapter or by the commissioner's written approval.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.044, eff. September 1, 2007.

Sec. 96.354. CIVIL DISCOVERY. Discovery of confidential information from a person subject to this subchapter under subpoena or other legal process must comply with rules adopted under this subtitle. The rules may:

(1) restrict release of confidential information to the portion directly relevant to the legal dispute at issue; and

(2) require that a protective order, in the form and under circumstances specified by the rules, be issued by a court before release of the confidential information.

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

Sec. 96.355. INVESTIGATIVE INFORMATION. (a)  
Notwithstanding any other law, the commissioner may refuse to release information or records in the custody of the Department of Savings and Mortgage Lending if the commissioner believes release of the information or records might jeopardize an investigation of possibly unlawful activities.

(b) Unless this subtitle provides otherwise, this subchapter does not apply to any information or to a report of an investigation obtained or made by the commissioner or the

commissioner's staff in connection with an application for charter or with a hearing held by the commissioner under this subtitle. The fact, information, or report may be included in the record of the appropriate hearing.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.045, eff. September 1, 2007.

Sec. 96.356. EXAMINATION REPORT. Unless the commissioner determines that a good reason exists to make the report public, a report of an examination made to the commissioner is confidential. Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 96.357. REMOVAL FOR VIOLATION. A person who violates this subchapter or who wilfully makes a false official report on the condition of a financial institution shall be removed from office or further employment with the Department of Savings and Mortgage Lending.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.046, eff. September 1, 2007.

#### SUBCHAPTER I. MISCELLANEOUS PROVISIONS

Sec. 96.401. DERIVATIVE SUIT. (a) The commissioner may bring a derivative suit on behalf of a savings bank on an unpursued cause of action if:

(1) the commissioner determines that the suit should be brought to protect the public interest or the interest of the savings bank or the shareholders, members, or creditors of the savings bank; and

(2) the savings bank has not brought suit on the action before the 30th day after the date on which the commissioner gives notice to the savings bank that suit should be brought.

(b) Except as provided by another statute that provides for

mandatory venue, venue is in a district court of Travis County.

(c) The commissioner may employ legal counsel to bring and prosecute a derivative suit. The commissioner may:

(1) pay counsel from funds appropriated for the operation of the Department of Savings and Mortgage Lending; or

(2) require the savings bank for which the suit is brought to pay the counsel directly or to reimburse the Department of Savings and Mortgage Lending for the payment.

(d) The savings bank shall be paid an amount equal to the amount of the proceeds of a judgment on a suit brought under this section less unreimbursed costs and expenses, including attorney's fees incurred by the Department of Savings and Mortgage Lending in prosecuting the suit.

(e) In this section, "unpursued cause of action" means an existing claim belonging to a savings bank on which a suit or other effective action has not been filed or taken by or on behalf of the savings bank on or before the last day of the sixth month after the date on which the cause of action arose, involving:

(1) a claim for monetary damages or recovery of property;

(2) a claim for equitable relief;

(3) a cause of action for breach of contract or for enforcement of a contract; or

(4) a claim on a fidelity bond.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. [3167](#)), Sec. 6.047, eff. September 1, 2007.

Sec. 96.402. PAYMENT OF INSURED DEPOSIT LIABILITIES BY FDIC. If the Federal Deposit Insurance Corporation pays the insured deposit liabilities of a savings bank that has been closed or is being liquidated under this chapter, regardless of whether the Federal Deposit Insurance Corporation has become receiver or liquidating agent, the Federal Deposit Insurance Corporation is subrogated, to the extent of the payment, to all rights that the owners of the deposit accounts have against the savings bank.

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

Sec. 96.403. ENFORCEABILITY OF LOAN PROMISE OR AGREEMENT MADE BY SAVINGS BANK BEFORE CONSERVATORSHIP OR SUPERVISORY CONTROL.

If a promise or agreement to lend money is not otherwise unenforceable under Chapter 26, Business & Commerce Code, and if the promise or agreement is made by the savings bank before the savings bank is placed under conservatorship or supervisory control, the promise or agreement or a memorandum of the promise or agreement is enforceable against the savings bank only if the promise or agreement or memorandum:

(1) is in writing and states the material terms of the loan and the loan's repayment;

(2) is signed by an authorized officer or employee of the savings bank and the person to whom the promise or agreement was made; and

(3) is approved by the savings bank's board of directors.

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

Sec. 96.404. INTEREST IN SAVINGS BANK PROHIBITED FOR DEPARTMENT. (a) A savings bank or a director, officer, employee, or representative of a savings bank may not give a loan or gratuity, directly or indirectly, to the commissioner, an employee of the Department of Savings and Mortgage Lending, or a spouse of the commissioner or employee.

(b) The commissioner or an employee of the Department of Savings and Mortgage Lending may not:

(1) hold an office or position in a domestic savings bank or exercise a right to vote on a domestic savings bank matter because the person is a member of or shareholder in the savings bank;

(2) hold an interest, directly or indirectly, in a domestic savings bank; or

(3) undertake an indebtedness as a borrower, directly or indirectly, or endorser, surety, or guarantor or sell or otherwise dispose of a loan or investment to a domestic savings

bank.

(c) If the commissioner or an employee of the Department of Savings and Mortgage Lending has a prohibited, direct or indirect right or interest in a domestic savings bank at the time of appointment or employment, the commissioner or employee shall dispose of the right or interest not later than the 60th day after the date of appointment or employment.

(d) If the commissioner or an employee of the Department of Savings and Mortgage Lending is indebted as a borrower, directly or indirectly, or is an endorser, surety, or guarantor on a note to a domestic savings bank at the time of appointment or employment, the commissioner or employee may continue in that capacity until that debt is paid.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.048, eff. September 1, 2007.

Sec. 96.405. PERMITTED TRANSACTIONS FOR DEPARTMENT RELATING TO SAVINGS BANK. (a) The commissioner or an employee of the Department of Savings and Mortgage Lending may hold a deposit account at a savings bank and receive earnings on the account.

(b) If a loan or other note of the commissioner or an employee of the Department of Savings and Mortgage Lending is acquired by a savings bank, the commissioner or employee may continue as a borrower, endorser, surety, or guarantor of the loan or note until the loan or note is paid.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.049, eff. September 1, 2007.