

## **BILL ANALYSIS**

Senate Research Center

H.B. 1870  
By: Marchant (Sibley)  
Economic Development  
4-30-97  
Engrossed

### **DIGEST**

Currently, trust companies in Texas are regulated by banking or other laws and are required to be chartered by the state banking department and registered with the secretary of state. Public trust companies act as fiduciaries and do not manage large loan or investment portfolios on their own behalf. Additionally, trust companies do not offer services such as checking, savings or money market accounts typically provided by other financial institutions. This bill would regulate public trust companies under a new Texas Trust Company Act.

### **PURPOSE**

As proposed, H.B. 1870 regulates public trust companies under a new Texas Trust Company Act.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Finance Commission in SECTION 1 (Chapter 1, Section 1.003; Chapter 2, Section 2.003(b); Chapter 3, Sections 3.008(c), 3.011(e); Chapter 5, Sections 5.101(h), 5.201(c); and Chapter 8, Section 8.009) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Enacts the Texas Trust Company Act, as follows:

#### **CHAPTER 1. GENERAL PROVISIONS**

Sec. 1.001. SHORT TITLE: Texas Trust Company Act.

Sec. 1.002. DEFINITIONS. Defines "account," "affiliate," "bank," "banking commissioner," "board," "branch," "capital," "certified surplus," "charter," "client," "company," "conservator," "control," "department," "depository institution," "equity capital," "equity security," "fiduciary record," "finance commission," "foreign corporation," "full liability participant," "hazardous condition," "home office," "insider," "insolvent," "investment security," "limited trust association," "loans and extensions of credit," "manager," "managing participant," "mutual funds," "officer," "operating subsidiary," "participant," "participant-transferee," "participation agreement," "participation shares," "person," "principal shareholder," "restricted capital," "regulatory accounting principles," "secondary capital," "shareholder," "shares," "state bank," "state trust company," "subsidiary," "supervisor," "trust association," "trust business," "trust deposits," "unauthorized trust activity," "undivided profits," and "voting security."

Sec. 1.003. TRUST COMPANY RULES. Authorizes the Finance Commission of Texas (finance commission) to adopt rules to accomplish the purpose of the Act. Provides that the presence or absence in this Act of a specific reference to rules regarding a particular subject does not enlarge or diminish the rulemaking authority conferred by this section.

#### **CHAPTER 2. POWERS AND DUTIES OF THE TEXAS DEPARTMENT OF BANKING**

##### **SUBCHAPTER A. OPERATION OF DEPARTMENT**

Sec. 2.001. INTERPRETIVE STATEMENTS AND OPINIONS. Authorizes the banking commissioner to issue interpretive statements containing matters of general policy for the guidance of state trust companies. Sets forth requirements and procedures for the interpretive statements. Authorizes the banking commissioner to issue opinions in response to a specific request from a member of the public or the state trust company industry. Sets forth requirements and procedures of the opinion. Provides that an interpretive statement or opinion does not have the force of law and is not a rule for the purposes of Chapter 2001, Government Code, unless adopted by the finance commission as provided by Chapter 2001, Government Code. Provides that an interpretive statement or opinion is an administrative construction of this Act entitled to great weight if the construction is reasonable and does not conflict with this Act.

Sec. 2.002. EXAMINATION. Sets forth requirements and procedures of an annual examination of each state trust company by the banking commissioner.

Sec. 2.003. STATEMENTS OF CONDITION AND INCOME. Requires a state trust company to file a copy of its statement of condition and income. Authorizes the finance commission, by rule, to require certain items. Provides that failure to file a statement of condition and income, timely, results in a penalty of not more than \$500 for each day of noncompliance. Provides that a statement of condition and income is a public record, except for portions designated as confidential.

Sec. 2.004. LIABILITY LIMITED. Sets forth requirements for limited liability and defending certain suits.

#### SUBCHAPTER B. CONFIDENTIALITY OF INFORMATION

Sec. 2.101. DISCLOSURE BY DEPARTMENT PROHIBITED. Provides that certain disclosure information by the Texas Department of Banking (department) is prohibited.

Se. 2.102. DISCLOSURE TO FINANCE COMMISSION. Prohibits certain information from being disclosed to a member of the finance commission.

Sec. 2.103. DISCLOSURE TO OTHER AGENCIES. Provides for the disclosure of certain information in certain cases.

Sec. 2.104. OTHER DISCLOSURE PROHIBITED. Prohibits certain information from being disclosed.

Sec. 2.105. CIVIL DISCOVERY. Provides that disclosure under a process in a civil hearing must comply with this Act.

Sec. 2.106. INVESTIGATIVE INFORMATION. Authorizes the banking commissioner to release certain information.

Sec. 2.107. EMPLOYMENT INFORMATION. Authorizes a person to provide certain employment information.

Sec. 2.108. SHAREHOLDER INSPECTION RIGHTS. Prohibits a shareholder from inspecting certain records of a state trust company.

### CHAPTER 3. POWERS; ORGANIZATION AND ORGANIZATIONAL CHANGES; CAPITAL AND SURPLUS

#### SUBCHAPTER A. ORGANIZATION PROVISIONS; GENERAL PROVISIONS

Sec. 3.001. ORGANIZATION AND POWERS OF STATE TRUST COMPANY. Sets forth the organization and powers of a state trust company.

Sec. 3.002. ARTICLES OF ASSOCIATION OF STATE TRUST COMPANY. Sets forth the articles of association of a state trust company.

Sec. 3.003. APPLICATION FOR STATE TRUST COMPANY CHARTER. Sets forth requirements and procedures of an application for a state trust company charter.

Sec. 3.004. NOTICE AND INVESTIGATION OF CHARTER APPLICATION. Sets forth requirements and procedures for notice and an investigation of a charter application.

Sec. 3.005. HEARING AND DECISION ON CHARTER APPLICATION. Sets forth requirements and procedures of a hearing and a decision on a charter application.

Sec. 3.006. ISSUANCE OF CHARTER. Sets forth requirements for delivery of a charter.

Sec. 3.007. RESTRICTED CAPITAL. Sets forth capital requirements. Sets forth requirements and procedures for required restricted capital.

Sec. 3.008. APPLICATION OF LAWS RELATING TO GENERAL BUSINESS CORPORATIONS. Sets forth the application of other laws to this Act. Authorizes the finance commission, by rule, to alter certain procedures or requirements of other laws.

Sec. 3.009. BANKING COMMISSIONER HEARINGS. Sets forth requirements and procedures for banking commissioner hearings.

Sec. 3.010. FINANCE COMMISSION HEARINGS; APPEALS. Sets forth requirements and procedures for finance commission hearings and appeals from the orders from the hearings.

Sec. 3.011. EXEMPTION. Sets forth requirements and procedures for an exemption from a specific provision of this Act.

Sec. 3.012. APPLICATION FOR EXEMPTION. Sets forth application for an exemption.

Sec. 3.013. ANNUAL CERTIFICATION. Sets forth requirements and procedures for annual certification of an exemption.

Sec. 3.014. LIMITATION ON EFFECT OF EXEMPTION. Requires an exempt state trust company to comply with the home office provisions of Section 3.202 of this Act. Provides that granting an exemption does not relieve the requirement to pay franchise taxes.

Sec. 3.015. CHANGE OF CONTROL. Sets forth requirements of control of a state trust company.

Sec. 3.016. GROUNDS FOR REVOCATION OF EXEMPTION. Sets forth grounds for revocation of an exemption.

Sec. 3.017. NOTICE AND EFFECT OF REVOCATION OF EXEMPTION. Sets forth requirements for notice and effect of revocation of exemption.

Sec. 3.018. ACTION AFTER REVOCATION. Sets forth certain duties after a state trust company's exemption has been revoked.

Sec. 3.019. PRIOR EXEMPTION. Provides that a state trust company exempt under a predecessor of this Act is considered exempt under this Act.

Sec. 3.020. TRUST COMPANIES CHARTERED UNDER PRIOR LAW. Provides that a trust company's charter incorporated before May 25, 1987 is void if not presented to the department before May 26, 1988 or if the department did not issue a new substitution charter before May 26, 1989.

Sec. 3.021. FOREIGN CORPORATIONS EXERCISING TRUST POWERS. Sets forth requirements for foreign corporations exercising trust powers.

Sec. 3.022. ACTIVITIES NOT REQUIRING CHARTER. Sets forth activities not requiring a state trust company charter.

#### SUBCHAPTER B. AMENDMENT OF ARTICLES; CHANGES IN CAPITAL AND SURPLUS

Sec. 3.101. AMENDMENT OR RESTATEMENT OF STATE TRUST COMPANY ARTICLES OF ASSOCIATION. Sets forth requirements and procedures for amendment or restatement of trust company articles of association.

Sec. 3.102. ESTABLISHING SERIES OF SHARES OR PARTICIPATION SHARES. Sets forth requirements and procedures for establishing a series of shares or participation shares.

Sec. 3.103. CHANGE IN RESTRICTED CAPITAL. Sets forth requirements for changing restricted capital.

Sec. 3.104. CAPITAL NOTES OR DEBENTURES. Sets forth requirements and procedures for issuing and selling capital notes and debentures.

Sec. 3.105. BOARD DESIGNATION OF CERTIFIED SURPLUS. Authorizes the board of a state trust company to designate surplus. Prohibits surplus from being reduced without prior approval of the banking commissioner.

#### SUBCHAPTER C. STATE TRUST COMPANY OFFICES

Sec. 3.201. CONDUCT OF TRUST BUSINESS. Authorizes a state trust company to engage in trust business at its home office.

Sec. 3.202. HOME OFFICE. Sets forth requirements of a state trust companies home office.

Sec. 3.203. ADDITIONAL OFFICES. Sets forth requirements for additional offices of a state trust company.

#### SUBCHAPTER D. MERGER

Sec. 3.301. MERGER AUTHORITY. Authorizes a state trust company to merge with a business corporation under the Texas Business Corporation Act.

Sec. 3.302. MERGER APPLICATION; GROUNDS FOR APPROVAL. Sets forth requirements for submission of a merger application and grounds for approval.

Sec. 3.303. APPROVAL OF BANKING COMMISSIONER. Sets forth requirements for approval of a merger by the banking commissioner.

Sec. 3.304. RIGHTS OF DISSENTERS TO MERGER. Authorizes a shareholder to dissent from the merger provided by the Texas Business Corporation Act or this Act.

#### SUBCHAPTER E. PURCHASE OR SALE OF ASSETS

Sec. 3.401. AUTHORITY TO PURCHASE ASSETS OF ANOTHER TRUST COMPANY. Sets forth requirements and authority of a state trust company's purchase of another trust company's assets.

Sec. 3.402. AUTHORITY TO ACT AS DISBURSING AGENT. Sets forth requirements for a state trust company's authority to act a disbursing agent.

Sec. 3.403. LIQUIDATION OF SELLING INSTITUTION. Sets forth requirements for liquidation of a selling institution.

Sec. 3.404. PAYMENT TO CREDITORS. Sets forth requirements and procedures for paying creditors of the selling institution.

Sec. 3.405. SALE OF ASSETS. Sets forth requirements and procedures for selling assets of a state trust company.

#### SUBCHAPTER F. STATE TRUST REGULATORY SYSTEM: EXIT OF STATE TRUST COMPANY

Sec. 3.501. MERGER, REORGANIZATION, OR CONVERSION OF STATE TRUST COMPANY INTO NATIONAL BANK EXERCISING FIDUCIARY POWERS. Sets forth the requirement for a merger, a reorganization, or a conversion of a state trust company into a national bank exercising fiduciary powers.

### CHAPTER 4. SHARES AND PARTICIPATION SHARES; SHAREHOLDERS AND PARTICIPANTS; MANAGEMENT

#### SUBCHAPTER A. TRANSFER OF OWNERSHIP INTERESTS IN STATE TRUST COMPANY

Sec. 4.001. ACQUISITION OF CONTROL. Prohibits a person, without prior approval, from owning a controlling interest in a state trust company. Sets forth control of a state trust company. Sets forth provisions to which this section does not apply.

Sec. 4.002. APPLICATION REGARDING ACQUISITION OF CONTROL. Sets forth requirements and procedures for applying for an acquisition of control.

Sec. 4.003. HEARING AND DECISION ON ACQUISITION OF CONTROL. Sets forth requirements for a hearing and a decision on acquisition for control.

Sec. 4.004. APPEAL FROM ADVERSE DECISION. Sets forth requirements and effects of an appeal from a decision on an acquisition of control.

Sec. 4.005. OBJECTION TO OTHER TRANSFER. Provides that this subchapter does 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 trust company, if the banking commissioner considers the transfer to be against the public interest.

Sec. 4.006. CIVIL REINFORCEMENT; CRIMINAL PENALTIES. Sets forth civil enforcement and criminal penalties for violating this subchapter or a rule or order of the banking commissioner.

#### SUBCHAPTER B. BOARD AND OFFICERS

Sec. 4.101. VOTING SECURITIES HELD BY TRUST COMPANY. Sets forth requirements for voting securities held by a trust company.

Sec. 4.102. BYLAWS. Authorizes a state trust company to adopt bylaws or to amend bylaws. Sets forth conditions whereby a state trust company is not required to adopt bylaws.

Sec. 4.103. BOARD OF DIRECTORS, MANAGERS, OR MANAGING PARTICIPANTS. Sets forth requirements for a state trust company's board of directors, managers, or managing participants.

Sec. 4.104. REQUIRED BOARD MEETINGS. Sets forth requirements of a state trust

company's board meetings.

Sec. 4.105. OFFICERS. Sets forth requirements for appointing officers of the state trust company.

Sec. 4.106. CERTAIN CRIMINAL OFFENSES. Sets forth criminal offenses for certain employees of a state trust company, relating to the state trust company.

Sec. 4.107. TRANSACTIONS WITH MANAGEMENT AND AFFILIATES. Sets forth requirements for the state trust company for transacting business with management and affiliates by a disinterested majority or certain other employees.

Sec. 4.108. FIDUCIARY RESPONSIBILITY. Sets forth fiduciary responsibility by the board of directors of a state trust company.

Sec. 4.109. RECORDKEEPING. Sets forth requirements for recordkeeping.

Sec. 4.110. BONDING REQUIREMENTS. Sets forth bonding requirements of the board of directors of a state trust company.

Sec. 4.111. REPORTS OF APPARENT CRIME. Sets forth requirements for reporting apparent crimes relating to the state trust company.

#### SUBCHAPTER C. SPECIAL PROVISIONS FOR LIMITED TRUST ASSOCIATIONS

Sec. 4.201. FILING OF NOTICE OF FULL LIABILITY. Sets forth requirements for filing of notice of full liability.

Sec. 4.202. LIABILITY OF PARTICIPANTS AND MANAGERS. Sets forth liability of certain employees of a state trust company.

Sec. 4.203. CONTRACTING DEBTS AND OBLIGATIONS. Sets forth requirements for contracting debts and other obligations.

Sec. 4.204. MANAGEMENT OF LIMITED TRUST ASSOCIATION. Sets forth requirements for the management of a limited trust association.

Sec. 4.205. WITHDRAWAL OR REDUCTION OF PARTICIPANT'S CONTRIBUTION CAPITAL. Sets forth provisions for withdrawal or reduction of a participant's contribution to capital.

Sec. 4.206. INTEREST IN LIMITED TRUST ASSOCIATION; TRANSFERABILITY OF INTEREST. Sets forth requirements for interest in a participant in limited trust associations and the transferability of that interest.

Sec. 4.207. DISSOLUTION. Sets forth situations under which a limited trust association is dissolved. Provides that a dissolution under this section is the initiation of a voluntary liquidation. Sets forth the effects of dissolution.

Sec. 4.208. ALLOCATION OF PROFITS AND LOSSES. Sets forth requirements for allocation of profits or losses.

Sec. 4.209. DISTRIBUTIONS. Sets forth requirements for distribution.

Sec. 4.210. OTHER PROVISIONS RELATED TO LIMITED TRUST ASSOCIATIONS. Sets forth provisions relating to the board of managers, participation shares, and distribution.

#### CHAPTER 5. INVESTMENTS, LOANS, AND DEPOSITS

## SUBCHAPTER A. ACQUISITION AND OWNERSHIP OF STATE TRUST COMPANY FACILITIES

Sec. 5.001. INVESTMENT IN STATE TRUST COMPANY FACILITIES. Defines "state trust company facility." Require a state trust company to include certain items when computing its limitation. Sets forth provisions for real estate acquired under Subsection (a)(3). Requires a state trust company to comply with certain accounting principles.

## SUBCHAPTER B. STATE TRUST COMPANY INVESTMENTS

Sec. 5.101. SECURITIES. Sets forth requirements for investing in certain securities. Provides that Subsection (c) applies to investments in small business related securities as defined by 15 U.S.C. Section 78c(a). Sets forth certain provisions regarding prudent investing. Authorizes the finance commission to adopt rules regarding investments.

Sec. 5.102. TRANSACTIONS IN STATE TRUST COMPANY SHARES OR PARTICIPATION SHARES. Sets forth prohibitions and requirements of a trust company's shares or participation shares.

Sec. 5.103. SUBSIDIARIES. Sets forth requirements for establishing and operating a trust company subsidiary.

Sec. 5.104. OTHER REAL ESTATE. Prohibits a trust company from investing its restricted capital unless certain provisions are met. Sets forth provisions for exchange in real estate or personal property. Requires a trust company to dispose of property Subject to Subsection (a) on certain dates. Authorizes the banking commissioner to grant extensions if certain provisions are met. Sets forth requirements for investing in a trust company's secondary capital in real estate.

## SUBCHAPTER C. LOANS

Sec. 5.201. LENDING LIMITS. Sets forth limits on a trust company's outstanding loans and extensions of credit to certain persons. Sets forth requirements for lending. Requires the finance commission to adopt rules to carry out this section. Sets forth the liability of trust company personnel for violating this section. Provides that this subchapter does not confer general banking privileges in a state trust company.

Sec. 5.202. LEASE FINANCING TRANSACTIONS. Sets forth requirements for owning and leasing tangible property for lease financing transactions.

## SUBCHAPTER D. OTHER INVESTMENT PROVISIONS

Sec. 5.301. OTHER INVESTMENT PROVISIONS. Sets forth provisions relating to secondary capital.

Sec. 5.302. ENGAGING IN COMMERCE PROHIBITED. Sets forth prohibited activities regarding trade or commerce.

## SUBCHAPTER E. TRUST DEPOSITS

Sec. 5.401. TRUST DEPOSITS. Sets forth requirements regarding trust deposits, withdrawals, and security for a deposit. Provides that this subchapter does not confer general banking privileges in a state trust company.

## SUBCHAPTER F. LIABILITIES AND PLEDGE OF ASSETS

Sec. 5.501. BORROWING LIMIT. Sets forth a borrowing limit of a state trust company.

Sec. 5.502. PLEDGE OF ASSETS. Prohibits a state trust company from pledging certain

assets.

## CHAPTER 6. ENFORCEMENT ACTIONS

### SUBCHAPTER A. ENFORCEMENT ORDERS: STATE TRUST COMPANIES AND MANAGEMENT

Sec. 6.001. DETERMINATION LETTER. Sets forth requirements for issuing a determination letter. Provides that the determination letter may be sent with other orders.

Sec. 6.002. CEASE AND DESIST ORDER. Sets forth requirements and procedures for issuing a cease and desist order.

Sec. 6.003. REMOVAL OR PROHIBITION ORDER. Sets forth requirements and procedures for issuing a removal or prohibition order.

Sec. 6.004. HEARING ON PROPOSED ORDER. Sets forth requirements, procedures, and time limits for a hearing on a proposed order.

Sec. 6.005. EMERGENCY ORDERS. Sets forth requirements for issuing emergency orders.

Sec. 6.006. COPY OF LETTER OR ORDER IN STATE TRUST COMPANY RECORDS. Requires certain copies of documents to be brought to the attention of the board of an affected state trust company. Requires certain persons within the trust company to certify that certain documents have been read and understood.

Sec. 6.007. EFFECT OF FINAL REMOVAL OR PROHIBITION ORDER. Sets forth the effects on a person subject to a final and enforceable removal or prohibition order. Provides that if securities under Subsection (a)(1) cannot be voted upon, the voting securities are authorized but unissued. Provides that certain participants are required to elect a board of managers.

Sec. 6.008. LIMITATION ON ACTION. Sets forth the statute of limitations for enforcement of actions under this subchapter.

Sec. 6.009. ENFORCEMENT OF FINAL ORDER. Sets forth procedures for the banking commissioner if a state trust company violates a final and enforceable cease and desist order.

Sec. 6.010. ADMINISTRATIVE PENALTIES. Sets forth procedures for administrative penalties.

Sec. 6.011. PAYMENT OR APPEAL OF ADMINISTRATIVE PENALTIES. Sets forth requirements and procedures for payment or appeal of administrative penalties.

Sec. 6.012. CONFIDENTIALITY OF RECORDS. Sets forth requirements for keeping certain documents confidential.

Sec. 6.013. COLLECTION OF FEES. Sets forth requirements for suing to collect a fee.

### SUBCHAPTER B. SUPERVISION AND CONSERVATORSHIP

Sec. 6.101. ORDER OF SUPERVISION. Sets forth requirements for appointing a supervisor over a state trust company.

Sec. 6.102. ORDER OF CONSERVATORSHIP. Sets forth requirements for appointing a conservator over a state trust company.

Sec. 6.103. HEARING. Sets forth requirements and procedures for a hearing regarding an order in Section 6.101 or 6.102.



Sec. 6.104. POST-HEARING ORDER. Sets forth duties of the banking commissioner depending on the outcome of the hearing.

Sec. 6.105. CONFIDENTIALITY OF RECORDS. Sets forth requirements for keeping certain documents confidential.

Sec. 6.106. DUTIES OF STATE TRUST COMPANY UNDER SUPERVISION. Sets forth the duties of a state trust company under supervision.

Sec. 6.107. POWERS AND DUTIES OF CONSERVATOR. Sets forth powers and duties of a conservator.

Sec. 6.108. QUALIFICATIONS OF APPOINTEE. Sets forth qualifications of an appointee as a supervisor or conservator.

Sec. 6.109. EXPENSES. Sets forth authorization and payment of expenses related to supervision or conservatorship.

Sec. 6.110. REVIEW OF SUPERVISOR OR CONSERVATOR DECISIONS. Sets forth requirements and procedures for a board of a state trust company to ask for a review of a supervisor's or conservator's decisions.

Sec. 6.111. VENUE. Sets forth venue for a suit against a state trust company while under supervision or conservatorship.

Sec. 6.112. DURATION. Sets forth the duration of supervision or conservatorship.

Sec. 6.113. ADMINISTRATIVE ELECTION OF REMEDIES. Authorizes the banking commissioner to close and liquidate a state trust company regardless of supervision or conservatorship status.

#### SUBCHAPTER C. UNAUTHORIZED TRUST ACTIVITY: INVESTIGATION AND ENFORCEMENT

Sec. 6.201. INVESTIGATION OF UNAUTHORIZED TRUST ACTIVITY. Sets forth authorized activities of the banking commissioner if there is reason to believe a trust company or its employees are engaged in unauthorized trust activity.

Sec. 6.202. UNAUTHORIZED USE OF "TRUST" AND SIMILAR WORDS. Prohibits the use of certain words in a business name. Sets forth the applicability of this section.

Sec. 6.203. SUBPOENA AUTHORITY. Sets forth the requirements and procedures of serving a subpoena.

Sec. 6.204. ENFORCEMENT OF SUBPOENA. Sets forth the means in which the banking commissioner enforces a subpoena.

Sec. 6.205. CONFIDENTIALITY OF SUBPOENAED RECORDS. Sets forth the confidentiality of a subpoena.

Sec. 6.206. EVIDENCE. Sets forth documents which are evidence under this section.

Sec. 6.207. CEASE AND DESIST ORDER REGARDING UNAUTHORIZED TRUST ACTIVITY. Sets forth requirements and procedures for issuing a cease and desist order related to unauthorized trust activity.

Sec. 6.208. EMERGENCY CEASE AND DESIST ORDER REGARDING UNAUTHORIZED TRUST ACTIVITY. Sets forth requirements and procedures for issuing

an emergency cease and desist order related to unauthorized trust activity.

Sec. 6.209. APPEAL OF CEASE AND DESIST ORDER REGARDING UNAUTHORIZED TRUST ACTIVITY. Provides that certain persons are authorized to appeal a cease and desist order related to unauthorized trust activity. Provides that a filed petition for judicial review does not stay or vacate a court order unless certain provisions are met.

Sec. 6.210. VIOLATION OF FINAL CEASE AND DESIST ORDER REGARDING UNAUTHORIZED TRUST ACTIVITY. Sets forth penalties for violating a cease and desist order related to unauthorized trust activity.

Sec. 6.211. PENALTY ORDER FOR UNAUTHORIZED TRUST ACTIVITY. Sets forth requirements for administering an administrative penalty. Sets forth penalties for violating a cease and desist order related to unauthorized trust activity.

Sec. 6.212. PAYMENT AND APPEAL OF PENALTY ORDER. Requires a person to take certain actions when a penalty order becomes final.

Sec. 6.213. JUDICIAL REVIEW OF PENALTY ORDER. Sets forth requirements for judicial review of an order from the banking commissioner.

Sec. 6.214. DEPOSIT TO GENERAL REVENUE FUND. Requires penalties collected under this subchapter to be credited to the general revenue fund.

## CHAPTER 7. DISSOLUTION AND RECEIVERSHIP

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 7.001. DEFINITION. Defines "administrative expense."

Sec. 7.002. REMEDIES EXCLUSIVE. Prohibits a court from taking certain actions. Prohibits a person from being designated as receiver, supervisor, conservator, or liquidator without approval from the banking commissioner. Provides that this chapter prevails over other conflicting laws of this state.

Sec. 7.003. APPOINTMENT OF INDEPENDENT RECEIVER. Sets forth requirements and procedures for appointing an independent receiver.

Sec. 7.004. FEDERAL DEPOSIT INSURANCE CORPORATION AS LIQUIDATOR. Authorizes the banking commissioner to tender a state trust company closed for liquidation to the Federal Deposit Insurance Corporation.

Sec. 7.005. SUCCESSION OF TRUST POWERS. Provides for the sale of the fiduciary accounts to a successor entity with fiduciary accounts. Sets forth the duties of the successor entity. Sets forth the applicability of this section.

### SUBCHAPTER B. VOLUNTARY DISSOLUTION

Sec. 7.101. APPROVALS REQUIRED FOR VOLUNTARY DISSOLUTION. Provides that a state trust company needs the approval of certain individuals for voluntary dissolution.

Sec. 7.102. NOTICE OF VOLUNTARY DISSOLUTION. Sets forth notice requirements for voluntary dissolution.

Sec. 7.103. SAFE DEPOSITS AND OTHER BAILMENTS. Provides that a contract between a state trust company and a person for bailment ceases on the date specified as the date for removal of the property. Sets forth procedures for not removing the property by the date specified.

Sec. 7.104. FIDUCIARY ACTIVITIES. Sets forth requirements for the termination of fiduciary requirements.

Sec. 7.105. FINAL LIQUIDATION. Sets forth duties of a state trust companies after all debts are paid and all property is transferred.

Sec. 7.106. ADMINISTRATIVE AUTHORITY; ELECTION OF REMEDIES. Provides that state trust company under voluntary dissolution is subject to this Act. Authorizes the banking commissioner to deviate from procedures regarding voluntary dissolution. Authorizes the banking commissioner to close a liquidating state trust company for certain reasons. Sets forth requirements to reopen a surrendered and cancelled state trust company.

#### SUBCHAPTER C. INVOLUNTARY DISSOLUTION AND LIQUIDATION

Sec. 7.201. ACTION TO CLOSE STATE TRUST COMPANY. Authorizes the banking commissioner to close a state trust company for certain reasons. Authorizes a majority of the state trust company's managers or managing participants to voluntarily close the state trust company and place it with the banking commissioner for liquidation.

Sec. 7.202. INVOLUNTARY CLOSING. Sets forth requirements and procedures for involuntarily closing a state trust company.

Sec. 7.203. NATURE AND DURATION OF RECEIVERSHIP. Sets forth the nature and duration of receivership of a state trust company.

Sec. 7.204. CONTEST OF LIQUIDATION. Sets forth the procedures for contesting a liquidation of a state trust company.

Sec. 7.205. NOTICE OF STATE TRUST COMPANY CLOSING. Sets forth notice requirements for closing a state trust company.

Sec. 7.206. INVENTORY. Requires a receiver to inventory a state trust company's assets.

Sec. 7.207. TITLE IN RECEIVER. Provides that a receiver has title to a state trust company's property, contracts, and rights of action. Sets forth the priority of a receiver over certain liens. Sets forth the effects of recording a receivership order.

Sec. 7.208. RIGHTS FIXED. Provides that the rights of certain entities are fixed on the date of closing a state trust company.

Sec. 7.209. DEPOSITORIES. Authorizes a receiver to deposit funds in certain institutions. Sets forth requirements if deposits exceed insured amounts.

Sec. 7.210. PENDING LAWSUITS. Sets forth the effects of liquidation on pending lawsuits. Sets forth the applicability of Sections 64.052, 64.053, and 64.056, Civil Practice and Remedies Code.

Sec. 7.211. NEW LAWSUITS. Sets forth the effect of liquidation on new lawsuits.

Sec. 7.212. RECORDS WITH THIRD PARTIES. Requires certain persons to deliver state trust company records to the receiver. Requires copies of documents relating to the state trust company to be delivered to the receiver.

Sec. 7.213. INJUNCTION IN AID OF LIQUIDATION. Authorizes a court to issue an injunction to take certain actions.

Sec. 7.214. SUBPOENA. Sets forth requirements and procedures for issuing a subpoena.

Sec. 7.215. EXECUTORY CONTRACTS; ORAL AGREEMENTS. Sets forth requirements

for terminating executory contracts. Sets forth the validity of an oral agreement.

Sec. 7.216. PREFERENCES. Provides that certain preferences are voidable.

Sec. 7.217. OTHER POWERS OF RECEIVER; ADMINISTRATIVE EXPENSES. Sets forth powers of a receiver. Provides that certain expenses are an administrative expense of liquidation.

Sec. 7.218. DISPOSAL OF PROPERTY; SETTLING CLAIMS. Authorizes a receiver to take certain actions. Sets forth requirements for settling claims by a receiver.

Sec. 7.219. DISCRETION OF COURT. Sets forth notice requirements for a hearing before entering an order.

Sec. 7.220. FILING REPORTS; EXPENSES. Sets forth requirements for the receiver in filing certain reports. Provides that expenses are to be paid out of funds and assets of the state trust company.

Sec. 7.221. COURT-ORDERED AUDIT. Authorizes a court in which a receivership is pending to order an audit.

Sec. 7.222. SAFE DEPOSITS AND OTHER BAILMENTS. Provides that a contract between a state trust company and a person for bailment ceases on the date specified as the date for removal of the property. Sets forth procedures for not removing the property by the date specified.

Sec. 7.223. FIDUCIARY ACTIVITIES. Sets forth requirements for the termination of fiduciary requirements.

Sec. 7.224. DISPOSITION AND MAINTENANCE OF RECORDS. Sets forth requirements for disposition and maintenance of records.

Sec. 7.225. RECORDS ADMITTED. Sets forth requirements for admittance of certain records in a receivership proceeding.

Sec. 7.226. RESUMPTION OF BUSINESS. Sets forth requirements for reopening a state trust company.

Sec. 7.227. AFTER-DISCOVERED ASSETS. Sets forth the disposition of assets discovered after liquidation.

#### SUBCHAPTER D. CLAIMS AGAINST RECEIVERSHIP ESTATE

Sec. 7.301. FILING CLAIMS. Sets forth requirements for filing a claim against a state trust company in liquidation.

Sec. 7.302. PROOF OF CLAIM. Sets forth requirements and procedures of filing a proof of claim.

Sec. 7.303. JUDGMENT AS PROOF OF CLAIM. Provides for the priority of a proof of claim. Provides that a judgment is a proof of claim.

Sec. 7.304. SECURED CLAIMS. Sets forth requirements of filing a secured claim against a state trust company in liquidation.

Sec. 7.305. UNLIQUIDATED OR UNDETERMINED CLAIMS. Sets forth requirements for filing unliquidated or undetermined claims against a state trust company in liquidation.

Sec. 7.306. SET-OFF. Sets forth requirements and procedures for setting-off mutual debts

and credits.

Sec. 7.307. ACTION ON CLAIMS. Sets forth duties of a receiver once certain claims are filed.

Sec. 7.308. OBJECTION TO APPROVED CLAIM. Provides for an objection to a receiver's action on a claim.

Sec. 7.309. APPEAL OF REJECTED CLAIM. Sets forth requirements for appealing a rejected claim.

Sec. 7.310. PAYMENT OF CLAIMS. Sets forth requirements for paying a proof of claim.

Sec. 7.311. PRIORITY OF CLAIMS AGAINST INSURED STATE TRUST COMPANY. Sets forth priority of claims against an insured state trust company.

Sec. 7.312. PRIORITY OF CLAIMS AGAINST UNINSURED STATE TRUST COMPANY. Sets forth priority of claims against an uninsured state trust company.

Sec. 7.313. EXCESS ASSETS. Sets forth the effects of excess assets.

Sec. 7.314. UNCLAIMED FUNDS AND PROPERTY. Requires all unclaimed property to be tendered to the comptroller.

#### CHAPTER 8. GENERAL PROVISIONS

Sec. 8.001. LIABILITIES, DEFENSES, AND INDEMNIFICATION OF CORPORATE OFFICIALS. Sets forth liability, defenses of, and indemnification of certain corporate officials. Defines "family member."

Sec. 8.002. ATTACHMENT, INJUNCTION, OR EXECUTION. Prohibits attaching, using an injunction, or using execution for the purpose of collecting a money judgment against a state trust company until certain provisions are met. Provides that this section does not affect an attachment, injunction, or execution for securing a money judgment against a client of or client account in the state trust company.

Sec. 8.003. SLANDER OR LIBEL OF STATE TRUST COMPANY. Sets forth offenses for committing slander or libel against a state trust company.

Sec. 8.004. AUTHORITY TO ACT AS NOTARY PUBLIC. Provides that a notary public is not disqualified from acknowledging or proofing a document solely because the person owns stock or participation interest in a state trust company.

Sec. 8.005. EXEMPTION FROM SECURITIES LAW. Exempts certain persons of a state trust company from certain securities law.

Sec. 8.006. SUCCESSION OF TRUST POWERS. Authorizes a successor entity with fiduciary powers to take certain actions if certain conditions are met.

Sec. 8.007. DISCOVERY OF CLIENT RECORDS. Sets forth provisions on discovery of client records.

Sec. 8.008. COMPLIANCE REVIEW COMMITTEE. Defines "civil action," and "compliance review document." Sets forth requirements of a compliance review document. Sets forth applicability of this section. Provides that this section does not limit certain discovery.

Sec. 8.009. PARITY. Provides that a state trust company has the same rights and powers as a state or national bank. Sets forth requirements for performing activities not authorized for

a state trust company. Authorizes a state trust company to appeal the banking commissioner's ruling on performing activities not authorized for a state trust company. Requires the finance commission to adopt certain rules regarding rights and privileges of a state trust company. Prohibits the finance commission from adopting certain rules.

SECTION 2. Amends Section 2001.223, Government Code, to make conforming changes.

SECTION 3. Amends Section 712.0441(h), Health and Safety Code, to make a conforming change.

SECTION 4. Amends Section 1, Article 9.05, Insurance Code, to make conforming changes.

SECTION 5. Amends Section 105A(c), Probate Code, to make a conforming change.

SECTION 6. Amends Section 2.13, Article 489e, V.T.C.S. (Texas Savings Bank Act), to make a conforming change.

SECTION 7. Amends Article 1302-7.06(2), V.T.C.S. (Texas Miscellaneous Corporation Laws Act), to make conforming changes.

SECTION 8. Amends Section 6, Article 5069-50.04, to make a conforming change.

SECTION 9. Repealer: Chapter XI, Article 342-1101, V.T.C.S. (Creation of trust companies; powers).

SECTION 10. Provides that this Act does not affect actions of the Finance Commission of Texas or the banking commissioner of Texas or civil, criminal or administrative proceedings before this Act.

SECTION 11. Provides that a trust company existing on the effective date of this Act retains powers in its charter as if it were a trust company chartered under the Texas Trust Company Act, as added by this Act.

SECTION 12. Makes application of this Act regarding criminal offenses prospective.

SECTION 13. Provides that certain shareholders are not required to file a change of control application.

SECTION 14. Makes application of this Act regarding civil enforcement provisions prospective.

SECTION 15. Provides that other laws prevail over this Act in terms of nonsubstantive revisions unless certain provision are met. Sets forth other grounds for prevailing over other laws.

SECTION 16. Effective date: September 1, 1997.

SECTION 17. Emergency clause.