

BILL ANALYSIS

Senate Research Center
76R11152 DWS-F

C.S.S.B. 861
By: Fraser
Economic Development
4/8/1999
Committee Report (Substituted)

DIGEST

In 1994, Congress passed the Interstate Banking and Branching Efficiency Act (Act). The Act created interstate branch banking for all states unless a state chose to opt out before June 1, 1997. In 1995, the Texas Legislature chose to opt out by passing H.B. 889 which prohibited banks in the state from having interstate branches. Two banks soon tested the state's decision by applying to the Office of the Comptroller of Currency (OCC) to relocate an existing main bank office in Texas to a location across state lines while maintaining the original office as a branch. The OCC approved both applications based on federal provisions that allow banks to relocate main offices within a certain distance from the original location. The Texas Banking Commissioner responded to both occurrences with lawsuits designed to prevent the relocations and maintain the state's decision to opt out of interstate branch banking. The United States District Court for the Northern District of Texas ruled against the commissioner, and after three years of litigation, the Supreme Court refused to hear the state's appeal. As a result of the loss in the court challenges, the opt-out law would apply to state-chartered institutions, but not to national banks, putting the state banks at a competitive disadvantage. The commissioner thus authorized the same interstate branching rights for state institutions as those newly held by national ones. The commissioner determined that the interstate branch banking would have a minimal impact on the Texas Department of Banking regarding work load or staffing levels. However, interstate branch banking would have a significant impact on many of the state's banking laws, as well as the state's franchise tax. The commissioner, therefore, created the Interstate Branching Task Force to study all of the problems and issues associated with interstate branch banking, develop recommendations, and draft legislation in order to address outstanding issues. C.S.S.B. 861 would establish the regulation of bank holding companies in an interstate banking and branching environment, the authorization of interstate operations of financial institutions in accordance with the requirements of federal law and in accordance with the requirements of federal law, and the enhancement of state bank and trust company charters for the interstate banking and branching environment.

PURPOSE

As proposed, C.S.S.B. 861 establishes the regulation of bank holding companies in an interstate banking and branching environment; the authorization of interstate operations of financial institutions in accordance with the requirements of federal law, and in accordance with the requirements of federal law; and the enhancement of state bank and trust company charters for the interstate banking and branching environment.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Finance Commission in SECTION 1.001 (Sections 201.002(d), 201.003(a), 204.101(b), Finance Code); SECTION 2.006 (Section 32.010, Finance Code); and SECTION 3.001 (Sections 9.001(d) and 9.302(b), Article 342a-1.001 et seq., V.T.C.S.); to the secretary of state in SECTION 1.001 (Section 201.103(i), Finance Code); and to the finance commissioner in SECTION 1.001 (Section 204.203(a)(8), Finance Code) of this bill.

Additionally, rulemaking authority is granted in SECTION 1.001 (Section 204.203(c), Finance Code), but cannot be determined to whom at this time.

SECTION BY SECTION ANALYSIS

ARTICLE 1. INTERSTATE BANKING AND BRANCHING

SECTION 1.001. Amends Title 3, Finance Code, by adding Subtitle G, as follows:

SUBTITLE G. BANK HOLDING COMPANIES; INTERSTATE BANK OPERATIONS

CHAPTER 201. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 201.001. SCOPE OF SUBTITLE. Sets forth the scope of this subtitle.

Sec. 201.002. DEFINITIONS. Defines “acquire,” “affiliate,” “agency,” “bank,” “bank holding company,” “Bank Holding Company Act,” “bank supervisory agency,” “branch,” “commissioner,” “company,” “control,” “de novo branch,” “deposit,” “depository institution,” “federal agency,” “federal branch,” “Federal Deposit Insurance Act,” “foreign bank holding company,” “foreign person,” “home state,” “home state regulator,” “host state,” “International Banking Act,” “Interstate Banking and Branching Efficiency Act,” “interstate branch,” “interstate merger transaction,” “limited branch,” “out-of-state bank,” “out-of-state bank holding company,” “out-of-state foreign bank,” “out-of-state state bank,” “representative office,” “resulting bank,” “state,” “state bank,” “state savings bank,” “subsidiary,” “Texas bank,” “Texas bank holding company,” “Texas representative office,” “Texas state agency,” “Texas state bank,” “Texas state branch,” and “United States.” Provides that definitions apply to this subtitle to the extent not inconsistent with this section and as context requires. Requires the definitions to be literally construed to accomplish the purposes of this subtitle. Authorizes the Finance Commission of Texas (finance commission) to adopt by rule other definitions to accomplish the purposes of this subtitle.

Sec. 201.003. RULES. Authorizes the finance commission to adopt necessary and reasonable rules to accomplish certain requirements necessary to implement the purposes of this subtitle. Sets forth certain considerations for the finance commission in adopting rules. Provides that the presence or absence in this subtitle of a specific reference to rules regarding a particular subject does not enlarge or diminish the rulemaking authority provided by this section.

Sec. 201.004. LAW APPLICABLE TO INTERSTATE BRANCHES. Establishes that the laws of this state apply to an interstate branch located in this state to the same extent the laws would apply if the branch in this state were a national bank with its main office located in this state, except to the extent otherwise provided under federal law. Establishes that the laws of this state govern a deposit contract between a bank and a consumer account holder if the branch or separate office of the bank that accepts the deposit contract is located in this state. Sets forth conditions for a legally operating interstate branch considered to be in and chartered in this state.

Sec. 201.005. COOPERATIVE AGREEMENTS; FEES. Authorizes the banking commissioner (commissioner), to the extent permitted by federal law, to enter into certain cooperative interactions with another bank supervisory agency. Authorizes supervisory or examination fees assessed by the commissioner in accordance with this subtitle to be shared with another bank supervisory agency or affiliate representing the bank supervisory agency in accordance with an agreement between the commissioner and the agency organization. Authorizes the commissioner to receive a portion of supervisory or examination fees assessed by another bank supervisory agency in accordance with an agreement between the commissioner and the agency.

Sec. 201.006. ISSUANCE OF INTERPRETIVE STATEMENTS AND OPINIONS. Authorizes the commissioner, deputy commissioner, or an attorney with the Texas Department of Banking (department), through certain interpretive statements and certain opinions, to encourage the effective coordination and implementation of home state laws and host state laws with respect to interstate branching. Sets forth manner in which an interpretive statement may be disseminated in order to notify persons affected by the interpretive statement or opinion. Authorizes an opinion to be disseminated to the public if the commissioner determines that the opinion is useful for the general guidance and convenience of the public or banks or bank holding companies. Requires a published opinion to be redacted, unless the party involved consents to have the party’s identity published. Establishes that notice of an amended or withdrawn statement or opinion must be disseminated in a substantially similar manner as the affected statement or

opinion was originally disseminated. Provides that an interpretive statement or opinion issued under this subtitle 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 that chapter. Establishes that an interpretive statement or opinion is an administrative construction entitled to great weight if the construction is reasonable and does not conflict with the subtitle.

Sec. 201.007. CONFIDENTIALITY. Prohibits disclosure of confidential information by the commissioner or any employee of the commissioner's department, except as provided by Chapter 31D, or with respect to a state savings bank in Subtitle C.

Sec. 201.008. NOTICE OF SUBSEQUENT EVENT. Requires each out-of-state bank that has established and maintains an interstate branch in this state pursuant to this subtitle to give written notice to the commissioner within a prescribed period of time before the event or emergency transaction of a merger or other transaction that would cause a change of control with respect to the bank or a bank holding company that controls the bank, with the results that an application would be required to be filed with the banks home state regulator or a federal bank supervisory agency, including an application filed pursuant to the Change in Bank Control Act of 1978, as amended, or the Bank Holding Company Act.

Sec. 201.009. ENFORCEMENT; APPEALS. Authorizes the commissioner, if it is determined that a bank holding company or a foreign bank has violated this subtitle or other applicable law of this state, to take certain enforcement action, except that it requires the commissioner to give prompt notice to the home state regulator of each enforcement action taken against an out-of-state bank holding company or foreign bank, and to consult and cooperate, as practicable, with the home state regulator in pursuing and resolving the enforcement action. Authorizes the bank holding company or foreign bank to appeal a final order or other decision of the commissioner as provided by certain sections. Authorizes the commissioner to take enforcement action as if the branch were a Texas state bank or state savings bank, if the commissioner determines that an interstate branch maintained by an out-of-state state bank in this state is being operated in violation of a law of this state or in an unsafe or unsound manner, except that the commission shall promptly give notice to the home state regulator of each home enforcement action taken against an out-of-state state bank, and shall consult and cooperate as practicable in pursuing and resolving the enforcement action. Authorizes an out-of-state bank to appeal a final order or other decision of the commissioner as provided by certain sections. Authorizes the commissioner to enforce the laws of this state against an entity subject to this subtitle by appropriate action in the courts, including an action for injunctive relief, if the banking commissioner concludes the action is necessary or desirable.

Sec. 201.010. TAXATION. Provides that a bank subject to this subtitle is subject to the franchise tax to the extent provided by Chapter 171, Tax Code.

Sec. 210.011. Severability Clause.

SUBCHAPTER B. REGISTRATION OF FINANCIAL INSTITUTIONS

Sec. 201.101. DEFINITIONS. Defines "financial institution," "out-of-state financial institution," and "Texas financial institution."

Sec. 201.102. REGISTRATION TO DO BUSINESS. Requires an out-of-state financial institution to file an application for registration with the secretary of state, before opening a branch or other office in this state, by complying with the law of this state relating to foreign corporations doing business in this state, notwithstanding certain other provisions in the law that are applicable to financial institutions.

Sec. 201.103. APPOINTMENT OF AGENT TO RECEIVE SERVICE OF PROCESS. Authorizes a Texas financial institution to file in the office of the secretary of state a statement appointing an agent authorized to receive service of process. Sets forth requirements for a statement appointing an agent. Sets forth requirements of the agent named. Requires a statement appointing an agent to be signed by an officer of the Texas financial institution and the person appointed agent, who by signing accepts the appointment. Authorizes the appointed agent to resign by filing a resignation in the office of the secretary of state and giving notice to the Texas

financial institution. Sets forth certain fees for the secretary of state to collect for the use of the state. Requires an amendment to a statement appointing an agent to receive service of process to meet the requirements for execution of an original statement. Authorizes a statement appointing an agent to be canceled by filing with the secretary of state a written notice of cancellation executed by an officer of the Texas financial institution. Sets forth requirements for a notice of cancellation. Establishes that service of process on a registered agent is an alternate method of service in addition to other methods provided by law unless other law specifically requires service to be made on the registered agent. Provides that a resignation or a notice of cancellation is effective immediately upon acknowledgment of filing by the secretary of state, and after the acknowledgment the financial institution is subject to service of process as otherwise provided by law. Authorizes the secretary of state to adopt forms and procedural rules for filing of documents.

CHAPTER 202. BANK HOLDING COMPANIES

Sec. 202.001. ACQUISITION OF BANK OR BANK HOLDING COMPANY. Requires a company intending to acquire a Texas bank holding company or Texas bank to submit to the commissioner a copy of the application for approval or notice submitted to the Board of Governors of the Federal Reserve System. Sets forth requirements for the copy of the application. Requires an applicant or notificant that is an out-of-state bank holding company to provide satisfactory evidence to the commissioner of compliance with or inapplicability of certain information. Requires the commissioner, upon receipt of the prescribed notice, to state in writing within the period prescribed certain views, recommendations, and opinions regarding the transaction by the commissioner. Provides that the commissioner is not required to disapprove the application or notice solely because of a certain opinion. Authorizes the commissioner to take certain action at the hearing, if the commissioner's response disapproves an application for or notice of an acquisition of a Texas state bank or Texas state bank holding company controlling a Texas state bank. Authorizes the commissioner to request a hearing, if the commissioner's response disapproves an application for or notice of an acquisition. Requires the commissioner, if the board of governors grants the request, to appear and present evidence at the hearing regarding the reasons the application or notice should be denied. Authorizes the commissioner to accept the decision or attempt to overturn the decision on appeal, if the board of governors approves an application or notice that the commissioner disapproved.

Sec. 202.002. LIMITATION ON CONTROL OF DEPOSITS. Prohibits the commissioner from approving an acquisition if, on consummation of the transaction, the applicant, and certain affiliates, would control 20 percent or more of the total amount of deposits in this state held by depository institutions in this state. Authorizes the commissioner to request and requires the applicant to provide supplemental information, including certain current information, to the commissioner to aid in a determination.

Sec. 202.003. REQUIRED AGE OF ACQUIRED BANK. Prohibits an out-of-state bank holding company from making an acquisition if the Texas bank to be acquired, or any Texas bank holding company to be acquired, has not been in existence and in continuous operation for at least five years as of the effective date of the acquisition. Sets forth the definition of a bank that has been in existence and continuous operation for the purposes of this section.

Sec. 202.004. ACQUISITION OF NONBANKING INSTITUTION. Requires a bank holding company doing business in this state that submits an application or notice regarding an acquisition or activity that involves or will involve an office location in this state to submit to the commissioner a copy of the application or notice when the application or notice is submitted to the board of governors. Requires the bank holding company to submit other information reasonably requested by the commissioner to determine the manner in which the acquisition or activity will directly or indirectly affect residents of this state. Authorizes the commissioner to hold a public hearing to assist in determining whether to disapprove the proposed acquisition or activity, regardless of certain requests. Requires the commissioner to convene a hearing if the bank holding company requests a hearing in writing when it submits the application or notice to the commissioner. Requires the commissioner to disapprove the proposed acquisition or activity if the commissioner determines that it would be detrimental to the public interest as a result of certain probable adverse effects. Authorizes the commissioner, in determining whether to disapprove the proposed acquisition or activity, to prepare and file a response to the application or notice with the board of governors and to request that a hearing be held. Requires the commissioner, if the request is granted, to appear and present evidence at the hearing regarding the reasons the proposed

acquisition or activity should be denied. Authorizes the commissioner, if the proposed acquisition or activity is approved by the board of governors and disapproved by the commissioner, to accept the decision or seek to overturn the decision on appeal.

Sec. 202.005. **APPLICABLE LAWS.** Authorizes the commissioner to examine and bring enforcement proceedings against certain bank holding companies as if the company were a Texas state bank. Requires a Texas bank that is controlled by a bank holding company that is not a Texas bank holding company to be subject to all laws of this state that are applicable to Texas banks that are controlled by Texas bank holding companies.

CHAPTER 203. INTERSTATE BANKING MERGERS AND BRANCHING

Sec. 203.001. **INTERSTATE BRANCHING BY TEXAS STATE BANKS.** Authorizes a Texas state bank to establish and maintain a de novo branch or acquire a branch in a state other than Texas, with prior approval from the commissioner. Authorizes a Texas state bank, with permission from the commissioner, to establish, maintain, and operate one or more branches in another state pursuant to an interstate merger transaction in which the Texas state bank is the resulting bank. Requires the applicant state bank, not later than the date on which the application is filed with the responsible agency, to file an application on a form prescribed by the commissioner and pay the fee prescribed by law. Requires the applicant to comply with the applicable provisions of certain sections. Requires the commissioner to approve the interstate merger transaction and the operation of branches outside of this state by the Texas state bank if the commissioner makes the findings required. Authorizes an interstate merger transaction to be consummated only after the applicant has received the commissioner's written approval.

Sec. 203.002. **CONDITIONS FOR ENTRY BY DE NOVO BRANCHING.** Authorizes an out-of-state bank to establish a de novo branch in this state providing certain conditions. Requires an out-of-state bank desiring to establish and maintain a de novo branch to provide written notice of the proposed transaction to the commissioner not later than the date on which the bank applies to the responsible agency for approval to establish the branch. Requires the filing of the notice to be accompanied by any prescribed filing fee. Authorizes a de novo branch to be established in this state through the acquisition of a branch of an existing Texas bank if the acquiring out-of-state bank complies with this section.

Sec. 203.003. **ENTRY BY INTERSTATE MERGER TRANSACTION.** Authorizes one or more Texas banks to enter into an interstate merger transaction with one or more out-of-state banks, and authorizes an out-of-state bank resulting from the transaction to maintain and operate the branches in this state of a Texas bank that participated in the transaction. Requires an out-of-state bank that will be the resulting bank in the interstate merger transaction to comply with Section 201.102. Requires the out-of-state bank that will be the resulting bank to notify the commissioner by a certain date to file an application for an interstate merger transaction, and to submit a copy and pay a fee for submitting the application to the commissioner. Requires a Texas bank that is party to the transaction to comply with applicable state and federal laws. Prohibits an out-of-state bank that does not operate a branch in Texas from establishing and maintaining a branch in this state through the acquisition of a branch of an existing Texas bank, providing certain exceptions.

Sec. 203.004. **LIMITATION ON CONTROL OF DEPOSITS.** Provides that an interstate merger transaction is not permitted if the resulting bank, including certain affiliations, would control 20 percent or more of the total amount of deposits in this state held by all depository institutions in this state. Authorizes the commissioner to request and the applicant to provide certain supplemental information to the commissioner to aid in a determination under this section.

Sec. 203.005. **REQUIRED AGE OF ACQUIRED BANK.** Prohibits an out-of-state bank from acquiring a Texas bank in an interstate merger transaction if the Texas bank has not been in existence and in continuous operation for at least five years as of the effective date of the acquisition, this section does not apply to the establishing of a de novo branch. Sets forth the definition of a bank that has been in existence and continuous operation for the purposes of this section.

Sec. 203.006. **ADDITIONAL BRANCHES.** Authorizes an out-of-state bank that has

established or acquired a branch in this state to establish or acquire additional branches in this state to the same extent that a Texas bank is authorized to establish or acquire a branch in this state under applicable state and federal laws.

Sec. 203.007. EXAMINATIONS; PERIODIC REPORTS. Authorizes the banking commissioner to make examinations of a branch established and maintained in this state and to determine whether the branch is being operated in compliance with the laws of this state in accordance with safe and sound banking practices. Sets forth sections that apply to the examinations. Authorizes the commissioner to prescribe requirements for periodic reports from an out-of-state bank that operates a branch in Texas. Sets forth reporting requirements prescribed by the commissioner.

CHAPTER 204. FOREIGN BANKS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 204.001. TRANSACTING BUSINESS. Prohibits a foreign bank from transacting business in Texas except to the extent permitted by this chapter. Sets forth business transactions that Subsection (a) does not prohibit. Provides that a foreign bank is not considered to be transacting business in this state merely because a subsidiary or affiliate transacts certain business in Texas.

Sec. 204.002. BOOKS, ACCOUNTS, AND RECORDS. Requires each Texas state branch, agency, or representative office to maintain and make available appropriate books, accounts, and records reflecting certain information regarding transactions and actions made on behalf of a foreign bank located outside the state.

Sec. 204.003. EXAMINATION; FEES. Authorizes the commissioner to make examinations of a Texas state branch, agency, or representative office to determine whether the office is being operated in compliance with the laws and in accordance with safe and sound banking practices. Provides that Sections 31.105-31.107 apply to the examinations. Requires a foreign bank that maintains a Texas state branch, agency, or representative office to pay certain fees to the commissioner.

Sec. 204.004. REPORTS. Sets forth requirements for the report made by a foreign bank doing business in Texas through a Texas state branch, agency, or representative office. Authorizes a license or registration of a foreign bank to be revoked or for the foreign bank to be subject to an enforcement action if the bank fails to make a required report or makes a material false or misleading statement in the report.

Sec. 204.005. CHANGE OF CONTROL OF FOREIGN BANK. Requires a foreign bank licensed to establish and maintain certain entities in Texas to file with the commissioner a notice of change of control in a prescribed form not later than the 14th day after the date of a merger or other transaction that results or will result in a change of control.

Sec. 204.006. OPERATIONS IN THIS STATE OF BANKS OWNED OR CONTROLLED BY FOREIGN BANKS AND OTHER FOREIGN PERSONS. Provides that the laws of this state governing certain aspects of Texas banks and out-of-state banks regarding interstate branches in the state do not prohibit ownership of or discriminate on the basis of ownership or control by foreign banks or other foreign persons. Provides that the commissioner may, notwithstanding Subsection (a), apply the laws of this state, in compliance with federal laws governing ownership, operation, or control of Texas banks, even if applicable specifically or exclusively to foreign banks or persons to a certain extent.

Sec. 204.007. ESTABLISHMENT OF INTERSTATE BRANCH IN THIS STATE BY OUT-OF-STATE FOREIGN BANK. Sets forth conditions similar to that of other banks by which an out-of-state foreign bank may establish an interstate Texas state branch. Sets forth required and authorized information that the commissioner may request with respect to the establishment of an initial interstate Texas state branch and subsequent interstate branches of an out-of-state foreign bank.

Sec. 204.008. CONVERSION OF EXISTING OFFICE. Sets forth the ascending order of

classes by which foreign bank offices are divided and ranked. Provides the application, appeal, and licensing process by which a foreign bank may change a lower class office into a higher class office. Provides the application, appeal, and licensing process by which a foreign bank may change a higher class office into a lower class office. Requires surrender of registration previously issued upon receipt of the new license or registration issued by the commissioner.

SUBCHAPTER B. DIRECT BRANCH AND AGENCY OFFICES OF FOREIGN BANKS

Sec. 204.101. APPLICATION TO ESTABLISH BRANCH OR AGENCY. Requires a foreign bank that desires to establish and maintain a Texas state branch or agency to submit an application along with other required documentation and fees to the commissioner. Authorizes the finance commission to adopt rules prescribing abbreviated application procedures and standards for certain foreign banks.

Sec. 204.102. HEARING AND DECISION ON APPLICATION. Authorizes the commissioner, upon receipt of the application and required materials, to determine from the application and initial investigation whether the conditions have been established. Requires the commissioner to fulfill certain conditions if an application is set for hearing. Provides that certain information is confidential and may not be disclosed in the public portion of the hearing. Requires the commissioner to make a finding from the record and enter an order granting or denying the license; and, if denied, the commissioner must inform the board of the denied order and reasons for the denial. Authorizes the commissioner to make an appeal of an application conditional, and to include the conditions in the order.

Sec. 204.103. ISSUANCE OF LICENSE. Requires the commissioner to issue a license to a foreign bank to establish and maintain a Texas state branch or agency (licensed foreign bank) if the commissioner finds after reasonable inquiry that certain violations were met. Requires each Texas state branch or agency to conspicuously post its license within the office. Provides that a license is not transferrable.

Sec. 204.104. NO CONCURRENT FEDERAL BRANCH OR AGENCY. Prohibits a foreign bank licensed to establish and maintain a Texas state branch or agency from concurrently maintaining a federal branch or federal agency in this state, and prohibits a foreign bank licensed to maintain a federal branch or federal agency from maintaining a Texas state branch or agency.

Sec. 204.105. POWERS OF BRANCH AND AGENCY. Provides that Texas state branch or agency is subject to state law applicable to banks as if the Texas state branch or agency were a Texas state branch, unless certain conditions exist. Sets forth certain exceptions regarding transactions for Texas state branches or agencies that may be required or authorized by the commissioner. Sets forth actions which a licensed foreign bank may engage in. Authorizes a licensed foreign bank to share the premises of the Texas state branch or agency if the books and records of the Texas state branch or agency are kept separately from those of the other office. Defines "resident of the United States."

Sec. 204.106. APPLICATION TO ACT AS FIDUCIARY. Prohibits a foreign bank from acting as a fiduciary at a Texas state branch or agency, unless obtaining a fiduciary license. Requires a foreign bank that intends to act as a fiduciary to submit an application to the commissioner. Sets forth requirements of the application. Requires the commissioner, on or before the 60th day after the date the application is completed, accepted for filing, and all required fees and deposits have been paid, to either approve or set for hearing the application. Requires the department, when a hearing is set, to participate as opposing party and the commissioner shall conduct the hearing and several prehearing conferences and opportunities for discovery. Authorizes the commissioner to issue a license permitting the foreign bank to engage in fiduciary activities if the commissioner finds that the foreign bank has sufficient fiduciary and accounting expertise and controls to protect beneficial interests under its control and will abide by the applicable laws of this state. Authorizes the commissioner to make approval of the application conditional in the order granting a license. Provides that approval of an application is conditional on a written commitment from the applicant, and the commitment is enforceable against the applicant. Authorizes a foreign bank that obtains approval to engage in fiduciary activities in the same manner as a Texas state bank or agency could do at the same location, and is subject to the same applicable limitations and conditions. Authorizes the commissioner to initiate an enforcement action or to suspend or revoke the

authority of a foreign bank to engage in fiduciary activities, if the commissioner finds in writing certain conditions regarding fiduciary activities.

Sec. 204.107. **FILING OF AMENDMENTS TO ARTICLES OF INCORPORATION.** Requires a foreign bank, if articles of incorporation are amended, to promptly file with the commissioner a copy of the amendment, duly authenticated by the proper officer. Provides that the filing does not enlarge or alter the business that the foreign bank is authorized to pursue, the foreign bank may transact business under a name other than that on the license or extend the duration of its corporate existence.

Sec. 204.108. **AMENDED LICENSE FOR BRANCH OR AGENCY.** Requires a licensed foreign bank to apply to the commissioner for an amended license if the foreign bank changes its name, or wants to change any additional purpose other than those set forth and in effect for the foreign bank license or amended license. Provides that the terms and conditions pertaining to the application and issuance of an amended license are the same as in the case of an initial application for a license.

Sec. 204.109. **RELOCATION OF OFFICE.** Authorizes a foreign bank with prior written approval from the commissioner, to relocate the branch or agency office. Requires a foreign bank that intends to relocate to submit a letter to the commissioner describing certain conditions regarding the relocation. Requires the commissioner to approve or deny the relocation, on or before the 30th day after the date the foreign bank has been accepted for filing and required fees have been paid. Prohibits the commissioner from permitting the foreign bank to relocate if the proposed location, manner of, and notification of relocation will be deceptive, or impede, or tend to impede the foreign bank's depositors and creditors in this state.

Sec. 204.110. **SEPARATE ASSETS.** Requires each licensed foreign bank to keep the assets of its business in this state separate and apart from the assets of its business outside this state. Entitles the depositors and creditors of a foreign bank arising out of certain transactions to absolute preference and priority over the depositors and creditors of the foreign bank outside of this state with respect to the assets of the foreign bank in this state.

Sec. 204.111. **DISCLOSURE OF LACK OF DEPOSIT INSURANCE.** Requires each licensed foreign bank to give notice that deposits and credit balances in the office are not insured by the Federal Deposit Insurance Corporation(FDIC).

Sec. 204.112. **LIMITATIONS ON PAYMENT OF INTEREST ON DEPOSITS.** Provides that a licensed foreign bank is subject to the same limitations with respect to payment of interest on deposits as a state bank that is a member of the Federal Reserve System.

Sec. 204.113. **PLEDGE OF ASSETS.** Provides that a licensed foreign bank, in accordance with adopted rules, may be required to keep on deposit with certain approved unaffiliated banks, money, and securities pledged to the commissioner in an aggregate amount to be determined by the commissioner, valued at the lower of principal amount or market value consisting of certain requirements. Provides that the assets deposited and the amount of the assets to be maintained are subject to the conditions and limitations the commissioner considers necessary or desirable for the maintenance of certain sound conditions and protections. Authorizes the commissioner to give credit to reserves requires to be maintained with a federal reserve bank pursuant to federal law. Authorizes the foreign bank to collect interest, while business continues in ordinary course, on money and securities deposited and to exchange, examine, and verify securities.

Sec. 204.114. **ASSET MAINTENANCE.** Requires a licensed foreign bank , in accordance with adopted rules, to satisfy at all times the ratio of branch or agency assets to liabilities determined at the commissioner's sole discretion, to be necessary or desirable with respect to the foreign bank. Provides that the types of assets and liabilities to be held in the state bank for the purposes of satisfying the ratio. Sets forth assets to be held in this state for the purposes of satisfying the ratio of assets to liabilities. Sets forth liabilities included for purposes of satisfying the ratio of assets to liabilities. Authorizes the commissioner to vary the ratio of assets to liabilities required for a foreign bank as may be necessary or desirable to reflect differences among Texas branches or agencies because of certain financial conditions. Provides that assets must be valued at the lower of either principal amount or market value. Authorizes the commissioner to determine the value of certain

assets or obligations held or owed to the foreign bank or its Texas state branch or agency in this state. Provides that assets with an undetermined value must be excluded from the ratio. Authorizes the commissioner to require a foreign bank to deposit the required assets with specific banks designated by the commissioner, if the commissioner considers it necessary or desirable for the maintenance of a sound financial condition, for the protection of certain entities, and maintenance of public confidence in the business of the Texas state branch or agency.

Sec. 204.115. VOLUNTARY CLOSURE OF BRANCH OR AGENCY. Prohibits a licensed foreign bank from closing an office without filing an application that has prior approval with the commissioner. Requires an application to be in the form and include the information required by the commissioner. Requires the commissioner to approve the application if the closing of the office will not be substantially detrimental to the foreign bank's depositors and creditors in this state. Authorizes the application to be approved subject to certain conditions imposed by the commissioner, including a condition that the foreign bank pledge assets for a specified period of time. Authorizes a foreign bank, upon approval of an application and all conditions precedent to closing have been fulfilled, to close the office and require delivery by officer, manager, or agent of the foreign bank of certain paperwork.

Sec. 204.116. ENFORCEMENT. Authorizes the commissioner to initiate an enforcement action or a proceeding to revoke the license of a Texas state branch or agency, if the commissioner finds certain conditions have not been met by the foreign bank.

Sec. 204.117. PROCEDURE FOR REVOCATION. Sets forth requirements for a notice of a revocation proceeding. Provides that unless the foreign bank requests a hearing in writing on or before the proposed effective date, the order takes effect as proposed and is not appealable. Requires a hearing requested on a proposed order to be held not later than the 30th day after the date the written request is received unless the parties agree to a later hearing date. Requires the department to act as the opposing party and requires the commissioner to conduct a hearing and prehearing conferences and opportunities for discovery. Prohibits the foreign bank from accepting new business pending the hearing, unless given prior written approval from the commissioner, that it shall comply with any stricter requirements. Prohibits certain information regarding the financial condition and business affairs of the foreign bank from being considered as public information, with certain exceptions. Requires the commissioner to issue or refuse to issue the proposed order based on the record. Authorizes an issued order to contain certain modifications indicated by the record to be necessary or desirable.

Sec. 204.118. IMMEDIATE SUSPENSION OR REVOCATION. Authorizes the commissioner to issue, if it is found that any factors set forth are true with respect to a licensed foreign bank and that it is necessary for the protection of the interest of creditors of the foreign bank in this state for the protection of the public interest that the commissioner immediately suspend or revoke the license for a period of up to 90 days, pending an investigation or hearing. Requires an order under this section to be served on the foreign bank in the prescribed manner.

Sec. 204.119. STATUS OF REVOKED LICENSE. Provides that a final order of the commissioner revoking a license is effective immediately, unless stayed by the commission or district court that has jurisdiction over an appeal, and requires the foreign bank to cease all activity requiring a license in this state. Requires all functions requiring a license to be transferred to another entity outside the state and that has the power to perform those functions. Provides that continued activity in this state of an unlicensed foreign bank is subject to Subchapter C, Chapter 35.

Sec. 204.120. SEIZURE AND LIQUIDATION. Authorize the commissioner to immediately take possession of the property and business of a foreign bank in this state, if any factor set forth on the state is true with respect to a licensed foreign bank, if that action is necessary or desirable for the protection of the interest of the depositors and creditors of the foreign bank, or for the protection of the public. Requires the commissioner to retain possession until the foreign bank resumes business or is finally liquidated, and provides that the commissioner is authorized to conditionally permit the foreign bank to resume business. Requires an order issued to be served on a foreign bank in the manner required. Requires the commissioner to initiate a receivership proceeding, as soon as practicable after taking possession, by filing a copy of the order in certain courts. Provides that the depositors and creditors of the Texas state branch or agency have an

absolute preference and priority over the creditors of the foreign bank's offices located outside this state. Establishes that an action initiated that seeks to directly or indirectly affect the assets of the Texas state branch or agency is considered to be an intervention in the receivership proceeding. Sets forth the venue for certain instituted actions in Travis County, and authorizes the court on a finding of good cause to transfer the action to the county of the Texas state branch or agency. Authorizes a foreign bank to contest the commissioner's actions. Authorizes the foreign bank, on or before the 10th day after property and business was taken possession by the commissioner, to intervene in the action filed by the banking commissioner to challenge the commissioner's closing of the foreign bank and to enjoin the commissioner or other receiver from liquidating assets. Authorizes the court to issue an ex parte order restraining the commissioner or other receiver from liquidating the foreign banks assets pending a hearing on the injunction. Requires the commissioner or other receiver to comply with the restraining order, but is authorized to petition the court for permission to liquidate an asset as necessary to prevent its loss or diminution pending the outcome of the injunction. Prohibits the commissioner or other receiver from being required to post bond. Requires the court to hear this action quickly and to give it priority. Authorizes the foreign bank, the commissioner, or other receiver to appeal the court's judgment, providing assets remain seized pending a final appellate court order. Authorizes liquidation of the state trust company, if the commissioner prevails in the trial court, to proceed unless the court orders otherwise. Provides that the court retains jurisdiction to permit liquidation of an asset as necessary to prevent its loss or diminution pending the outcome of the appeal. Requires the commissioner or other receiver to transfer any remaining assets, once litigation is completed, except providing certain conditions regarding other offices the foreign bank has.

Sec. 204.121. DISSOLUTION. Provides that if a licensed foreign bank is dissolved, has its authority or existence canceled or terminated in the jurisdiction of its incorporation, or has its authority to maintain a branch in the state terminated, an officer, manager, or agent of the foreign bank is required to deliver certain certified copies and documents. Provides that the filing of the certificate, order, or decree has the same effect as if the issued license were revoked by the commissioner as of the effective date of termination or cancellation specified in the certificate, order, or decree unless the commissioner orders an earlier effective date.

SUBCHAPTER C. REPRESENTATIVE OFFICES OF FOREIGN BANK

Sec. 204.201. REGISTRATION OF REPRESENTATIVE OFFICE. Authorizes a foreign bank to establish a Texas representative office, if the foreign bank files a verified statement of registration with the commissioner. Sets forth requirements of a statement of registration. Authorizes the commission to adopt rules prescribing abbreviated registration procedures and standards for certain foreign banks. Establishes that a foreign bank that maintains a Texas state branch or agency in this state is not prohibited from establishing or maintaining one or more Texas state representative offices.

Sec. 204.202. PLACE OF BUSINESS. Authorizes a Texas representative office to engage in authorized business at each place of business registered with the commissioner. Authorizes the Texas representative office to change its location in the state by filing a notice with the commissioner containing certain information.

Sec. 204.203. PERMISSIBLE ACTIVITIES OF REPRESENTATIVE OFFICE. Sets forth authorized permissible activities for a registered Texas representative office of a foreign bank. Prohibits a Texas representative office from soliciting or accepting credit balances or deposits or making final credit decisions. Authorizes a Texas representative office, that is or becomes a regional administration office, to be defined more fully by rule and may engage in certain credit approval activities. Requires written notice to be in a form and contain information required by the commissioner.

Sec. 204.204. ENFORCEMENT. Authorizes the commissioner to initiate an enforcement action or a proceeding to revoke the registration of a representative office if the commissioner finds that the foreign bank has violated certain conditions.

Sec. 204.205. PROCEDURE FOR REVOCATION. Sets forth requirements for a notice of a revocation proceeding. Provides that unless the foreign bank requests a hearing in writing on or before the effective date, the order takes effect as proposed and is final and nonappealable.

Requires a hearing requested on a proposed order to be held not later than the 30th day after the date the written request was received by the commissioner, or the parties agree to a later hearing date. Requires the department to participate as the opposing party and requires the commissioner to conduct the hearing and prehearing conferences and opportunities for discovery. Prohibits the foreign bank from accepting new business from the state pending the hearing, unless prior approval from the commissioner is obtained. Prohibits information regarding the financial condition and business affairs of the foreign bank from being considered public information. Requires the commissioner to issue or refuse to issue the proposed order. Authorizes an issue ordered to contain modifications indicated by the record to be necessary or desirable, including modifications to impose penalties in lieu of revocation of registration.

Sec. 204.206. EFFECT OF REVOKED REGISTRATION. Requires a foreign bank that had its registration revoked to cease all activities in the state. Provides that continued activity of an unregistered foreign bank in this state is subject to Chapter 35C.

Sec. 204.207. DISSOLUTION. Requires an officer, manager, or agent of the foreign bank to deliver certain certified copies to the commissioner, if the foreign bank is dissolved, has its authority or existence terminated or canceled in the jurisdiction of its incorporation or has the authority to maintain its Texas representative office terminated. Provides that the filing of a certificate, order, or decree has the same effect as if the registration were revoked by the commissioner.

ARTICLE 2. CONFORMING AMENDMENTS TO FINANCE CODE

SECTION 2.001. Amends Section 12.110(a), Finance Code, to establish that the banking commissioner or an officer or employee of the department commits an offense if the person knowingly becomes directly or indirectly indebted to, or financially interested in an entity supervised or regulated by the banking commissioner, rather than the state bank, foreign bank agency, or trust company. Makes conforming changes.

SECTION 2.002. Amends Sections 31.002(a)(2), (8), (50), and (52), Finance Code, to redefine “bank,” “branch,” “state bank,” and “state savings bank.”

SECTION 2.003. Amends Section 31.005(b), Finance Code, to delete text regarding certain types of financial institutions. Makes conforming changes.

SECTION 2.004. Amends Section 31.007(a), Finance Code, to exempt certain employees of a bank that has a main office or branch in this state that meet certain conditions from certain registration and licensing provisions. Makes conforming changes.

SECTION 2.005. Amends Sections 31.102 and 31.103, Finance Code, to make conforming changes.

SECTION 2.006. Amends Chapter 32A, Finance Code, by adding Section 32.010, as follows:

Sec. 32.010. ADDITIONAL POWERS. Authorizes a Texas state bank to engage in certain activities permissible within the United States, if the banking commissioner approves the exercise of the power subject to the same limitations and restrictions applicable to the other depository institution by pertinent law, except to the extent the limitations and restrictions are modified by certain adopted rules. Prohibits this section from being used by a Texas state bank to alter or negate the application of the laws with respect to certain conditions. Requires state banks, intending on exercising power that is not authorized under the statutes, to submit a detailed letter to the banking commissioner regarding the power that the bank proposes to exercise and the specific authority of another depository institution to exercise the power. Requires the bank to copy the letter to certain individuals, and may begin exercising the power after a certain waiting period unless expressly prohibited by the banking commissioner. Authorizes the banking commissioner to prohibit the bank from exercising the power only if the banking commissioner finds certain conditions exist. Sets forth conditions regarding an extended, but finite waiting period in order for the banking commissioner to require further information or analysis. Requires the commissioner to approve, prohibit, or convene a hearing regarding the proposed power. Authorizes the bank to appeal a denial, or resubmit a letter with additional relevant information. Provides that a denial is immediately final for purposes of appeal. Authorizes the finance

commissioner to adopt rules implementing the method or manner in which a state bank exercises specific powers granted, including rules regarding prohibited power. Prohibits the finance commission from adopting rules unless it considers certain factors and findings. Provides that the exercise of a power by a state bank in compliance with and in the manner authorized by this section is not a violation of any statute of this state.

SECTION 2.007. Amends Section 32.202(a), Chapter 32, Finance Code, to establish that in addition to the registered agent for the bank, if one is maintained, each officer at the home office is an agent for service of process for the bank. Makes a nonsubstantive change.

SECTION 2.008. Amends Chapter 32D, Finance Code, by adding Section 32.304, as follows:

Sec. 32.304. **LIMITATION ON CONTROL OF DEPOSITS.** Provides that a merger is not permitted, if on consummation of a transaction, the resulting state bank would control 20 percent or more of the total amount of deposits held by all insured depository institutions in this state. Requires an applicant to provide certain current supplemental information filed with or produced by state or federal authorities, upon request of the banking commissioner. Defines “deposit” and “insured depository institution.” Makes conforming changes.

SECTION 2.009. Amends Chapter 32E, Finance Code, by adding Section 32.406, as follows:

Sec. 32.406. **LIMITATION ON CONTROL OF DEPOSITS.** Provides that a purchase of assets is not permitted, if on consummation of the transaction, the acquiring state bank would control 20 percent or more of the total amount of deposits in this state held by all insured depository institutions. Requires the applicant to supply certain supplemental information to the banking commissioner to aid in a determination. Makes conforming changes.

SECTION 2.010. Amends Chapter 32F, Finance Code, as follows:

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

Sec. 32.501. New heading: **MERGER OR CONVERSION OF STATE BANK INTO ANOTHER FINANCIAL INSTITUTION.** Authorizes a state bank to act as necessary under and to the extent permitted by laws of the United States, this state, another state, or another country to merge, rather than reorganize, or convert into another financial institution. Provides that Section 32.304 applies to a proposed merger. Makes conforming and nonsubstantive changes.

Sec. 32.502. **CONVERSION OF FINANCIAL INSTITUTION INTO STATE BANK.** Makes conforming changes.

SECTION 2.011. Amends Section 33.005, Finance Code, to make a conforming changes.

SECTION 2.0115. Amends Section 33.103, Finance Code, by adding Subsection (f), to authorize the banking commissioner in the exercise of discretion to waive or reduce the residency requirements for directors set forth in Subsection (a).

SECTION 2.012. Amends Section 34.301, Finance Code, by adding Subsection (c), to provide that the laws of this state govern a deposit contract between a bank and a consumer account holder if the branch or separate office of the bank that accepts the deposit contract is located in this state.

SECTION 2.013. Amends Section 35.003(a), Finance Code, to delete text regarding certain entities licensed by the banking commissioner.

SECTION 2.014. Amends Section 35.007(a), Finance Code, to include certain financial entities in which a person subject to final and enforceable removal or prohibition order may not serve as a director, officer, or employee.

SECTION 2.015. Amends Section 35.201, Finance Code, to establish that this subchapter does not apply to a financial institution that lawfully maintains its main office or a branch in this state. Deletes text regarding other financial institutions.

SECTION 2.016. Amends Chapter 59A, Finance Code, as follows:

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 59.001. DEFINITIONS. Defines “civil action,” “claim against a customer,” “compliance review document,” “customer,” “financial institution,” “out-of-state financial institution,” “record,” “record request,” “Texas financial institution,” and “tribunal.” Deletes existing section regarding the office an of out of state bank.

Sec. 59.002. SLANDER OR LIBEL OF BANK. Makes no changes.

Sec. 59.003. AUTHORITY OF NOTARY PUBLIC. Makes conforming changes.

Sec. 59.004. SUCCESSION OF TRUST POWERS. Provides that in the sale of certain activities at a branch or other office a successor or purchasing financial institution with sufficient fiduciary authority may continue the office, trust, or fiduciary relationship without certain judicial action and without regard to certain other qualifications. Makes conforming changes.

Sec. 59.005. AGENCY ACTIVITIES. Authorizes a state bank to agree to conduct transactions and other services with prior approval of the banking commissioner, as an agent for another financial institution. Requires a state bank that proposes to enter into an agency agreement to file a letter with the banking commissioner within a certain amount of time stating certain conditions regarding the agency agreement. Requires the banking commissioner, providing prior approval is not obtained, to consider, within a specific period of time, whether the service would be consistent with current laws and provide safety and soundness of the principal and agent. Provides that the service is approved if the banking commissioner takes no action on the notice, but authorizes the banking commissioner to extend the waiting period to inquire about additional information and analysis. Sets forth conditions under which a state bank may not conduct certain activity in an agency agreement. Authorizes the banking commissioner to order certain financial institutions to cease acting as an agent or principal that the banking commissioner finds inconsistent with safe and sound banking practices. Establishes that a financial institution that is acting as an agent for another financial institution is not a branch of that institution. Sets forth conditions which this section does not affect. Deletes text regarding an agent for the affiliate.

Sec. 59.006. DISCOVERY OF CUSTOMER RECORDS. Establishes that this section provides the exclusive method for compelled discovery of a record of financial institution relating to one or more customers. Provides that this section does not create a right of privacy in a record and does not apply to certain records and investigative demands. Requires a financial institution to produce a record in response to a record request only if certain conditions are met. Requires the requesting party to follow certain procedures, if the affected customer is not a party to a proceeding in which the record request was issued, in addition to serving the financial institution with a record request. Sets forth actions the customer may take with regard to the customer’s record, and may request its relevance and whether or not portions of the records may be redacted and not produced. Provides that a customer that is a party to the proceeding bears the burden of preventing or limiting the financial institution’s compliance with certain requests or orders, served within a set period of time. Provides that the financial institution is not liable to its customer or another person for disclosure of a record in compliance with this section. Prohibits a financial institution from being required to produce a record under this section before certain dates. Establishes that an order to quash or for protection or other remedy entered or denied by the tribunal is not a final order and an interlocutory appeal may not be taken. Deletes text regarding civil discovery of a customer record.

Sec. 59.007. ATTACHMENT, INJUNCTION, EXECUTION, OR GARNISHMENT. Prohibits an attachment, injunction, execution, or writ of garnishment from being issued against or served on certain financial institutions within the state before a judgment is final and all appeals have been foreclosed by law. Provides that the same conditions with regard to a judgment against the customer of a financial institution are not governed by this section.

Sec. 59.008. CLAIMS AGAINST CUSTOMERS OF FINANCIAL INSTITUTIONS. Requires a claim against a customer of a financial institution to be delivered or served at a specific address with respect to certain financial institutions. Provides that if a financial institution files a registration statement with the secretary of state, with respect to certain entities, a claim against

a customer of the financial institution is not effective as to the financial institution if the claim is served or delivered to a certain address. Provides that the customer bears the burden of preventing or limiting a financial institution's compliance with or response to a claim subject to this section by seeking an appropriate remedy to prevent or suspend the financial institution's response to a claim against the customer. Provides that a financial institution that does not file the registration is subject to service or delivery of all claims against the customers of the financial institution as otherwise provided by law.

Sec. 59.009. COMPLIANCE REVIEW COMMITTEE. Deletes the definitions of "civil action" and "compliance review." Makes conforming changes.

SECTION 2.017. Amends Section 59.201, Finance Code, to authorize a person to install, maintain, and operate electronic terminals for the convenience of customers of financial, rather than depository, institutions. Make conforming changes.

SECTION 2.018. Amends Section 59.202(c)(3), Finance Code, to redefine "financial institution." Make conforming changes.

SECTION 2.019. Amends Section 59.301(7), Finance Code, to redefine "financial institution." Make conforming changes.

SECTION 2.020. Amends Section 152.202(a), Finance Code, to make conforming changes.

SECTION 2.021. Amends Section 152.301(b), Finance Code, to make conforming changes.

SECTION 2.022. Amends Section 153.117(a), Finance Code, to make conforming changes.

SECTION 2.023. Amends Sections 154.002(1)-(4), to delete the definition of "bank." Defines "financial institution." Makes conforming changes.

SECTION 2.024. Amends Section 154.253(a), Finance Code, to make conforming and nonsubstantive changes.

SECTION 2.025. Amends Section 154.257(a), Finance Code, to make conforming changes.

SECTION 2.026. Amends Section 154.258(a), Finance Code, to set forth bounds in which money in a prepaid funeral benefits trust may be invested. Makes conforming changes.

SECTION 2.027. Amends Section 154.353(a), Finance Code, to set forth entities in which funds may be deposited. Deletes text regarding savings and loans, and trust companies.

SECTION 2.028. Amends Section 271.001(a), Finance Code, to make conforming changes.

SECTION 2.029. Amends Section 271.002(a), Finance Code, to make conforming changes.

SECTION 2.030. Amends Sections 274.001, 274.002, and 274.003, Finance Code, to define "bank." Redefines "bank holding company" and "fiduciary account." Makes conforming changes.

SECTION 2.031. Amends Section 274.101(a), Finance Code, to authorize a trust company to enter into an agreement with certain banks, provided the situs of account administration is not moved outside of this state without the express written consent of all persons entitled to notice.

SECTION 2.032. Amends Section 274.102, Finance Code, to make conforming changes.

SECTION 2.033. Amends Sections 341.001(1), (2), and (8), Finance Code, to redefine "authorized lender," "bank," and "savings association."

SECTION 2.034. Amends Section 341.103, Finance Code, as follows:

Sec. 341.103. New heading: REGULATION SAVINGS OF ASSOCIATIONS. Makes conforming changes.

SECTION 2.035. Amends Section 345.001(1), Finance Code, to redefine “credit card issuer.”

SECTION 2.036. Amends Section 393.002(a), Finance Code, to make conforming changes.

SECTION 2.037. Amends Section 393.402(a), Finance Code, to make conforming changes.

SECTION 2.038. Amends Section 394.103, Finance Code, to make conforming changes.

ARTICLE 3. MULTISTATE TRUST BUSINESS

SECTION 3.001. Amends Article 342a-1.001 et seq., V.T.C.S., by adding Chapter 9, as follows:

CHAPTER 9. MULTISTATE TRUST BUSINESS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 9.001. DEFINITIONS. Defines “acquire,” “bank,” “branch,” “credit union,” “de novo trust office,” “foreign bank,” “home state,” “home state regulator,” “host state,” “office,” “out-of-state trust company,” “principal office,” “representative trust office,” “savings association,” “savings bank,” “state,” “state trust institution,” “supervisory agency,” “trust company,” “trust institution,” and “trust office.” Provides that the definitions of this Act apply to the extent not inconsistent with this chapter. Requires definitions to be liberally construed. Authorizes the finance commission by rule to adopt other definitions.

Sec. 9.002. COMPANIES AUTHORIZED TO CONDUCT A TRUST BUSINESS. Prohibits a company from conducting a trust business in this state unless the company is a trust institution and fulfills certain conditions. Authorizes a trust institution that does not maintain certain types of offices in this state to act as a fiduciary to the extent permitted by law. Provides that a company does not engage in the trust business in a manner requiring a charter or license by engaging in certain activity, except that the registration requirements may apply to a trust office engaging in the activity.

Sec. 9.003. INTERSTATE TRUST BUSINESS OF STATE TRUST COMPANY. Authorizes a state trust company to engage in the trust business in another state or foreign country to the extent permitted by all applicable laws.

Sec. 9.004. TRUST BUSINESS OF OUT-OF-STATE TRUST COMPANY. Provides that an out-of-state trust company that establishes or maintains an office in this state may conduct any activity at the office that would be authorized under laws of this state for a state trust company to conduct at the office. Requires an out-of-state trust company to comply with certain laws prior to establishing an office.

Sec. 9.005. DESIGNATION OF TRUSTEE AND GOVERNING LAW. Authorizes a person residing in this state to designate a trust institution to act as a fiduciary on behalf of the person, unless otherwise specified by law. Establishes that if a trust or its subject matter bears a reasonable relation to this state as well as another state or country, the person may agree that the laws of either entity governs their rights and duties. Provides that if a trust is established by a client that resides in this state and is solicited from or accepted by an office of the trust institution this state, a trust institution is subject to Sections 113.052, and 113.053, Property Code.

Sec. 9.006. TAXATION. Provides that an out-of-state trust institution doing business in this state is subject to a franchise tax.

Sec. 9.007. Severability clause.

SUBCHAPTER B. OUT-OF-STATE TRUST COMPANY TRUST OFFICE

Sec. 9.101. TRUST OFFICES IN THIS STATE. Authorizes an out-of-state trust company to engage in a trust business at an office, providing the office establishes and maintains a trust office in this state.

Sec. 9.102. ESTABLISHING AN INTERSTATE TRUST OFFICE. Prohibits an out-of-state trust office that does not operate a trust office in this state from establishing and maintaining a de novo trust office unless certain conditions are fulfilled. Authorizes a de novo trust office to be established through the acquisition of a trust office in this state of an existing trust institution, subject to Subsection (a).

Sec. 9.103. ACQUIRING AN INTERSTATE TRUST OFFICE. Sets forth conditions and requirements by which an out-of-state trust company is either authorized or prohibited from acquiring a trust institution in this state.

Sec. 9.104. REQUIREMENT OF NOTICE. Requires an out-of-state trust company desiring to establish and maintain a de novo trust office or acquire an existing trust institution in this state and to maintain and operate the acquisition to provide written notice of the proposed transaction to the banking commissioner on or after the date on which the out-of-state trust company applies to the home of the state regulator for approval. Requires the filing of the notice to be preceded by or accompanied by certain other documentation and fees. Requires the documentation to contain a sufficient amount of information so as to enable a decision.

Sec. 9.105. CONDITIONS FOR APPROVAL. Authorizes an out-of-state trust company to be acquired or established in this state providing certain conditions are met. Authorizes the banking commissioner to condition approval upon compliance by an out-of-state trust company. Authorizes the out-of-state trust company to commence business at the trust office on the 61st day after the banking commissioner notifies the company that all requirements are met, unless the banking commissioner specifies a different date. Authorizes the review period to be extended by the banking commissioner on a determination that the written notice raises issues that require additional information or analysis. Provides that the out-of-state trust institution may establish the office before the end of the review period upon written approval from the banking commissioner. Authorizes the commissioner to either approve or deny the request upon consideration of the information and analyses.

Sec. 9.106. ADDITIONAL TRUST OFFICES. Authorizes an out-of-state trust that maintains an office in this state to establish or acquire additional offices pursuant to proper procedures for establishing or acquiring the offices.

SUBCHAPTER C. OUT-OF-STATE TRUST INSTITUTION REPRESENTATIVE TRUST OFFICE

Sec. 9.201. REPRESENTATIVE TRUST OFFICE BUSINESS. Authorizes an out-of-state trust institution to establish a representative trust office providing certain conditions are met. Prohibits a trust representative office from acting as a fiduciary or otherwise engaging in the trust business in the state. Authorizes an out-of-state trust institution to establish and maintain representative trust offices anywhere in the state.

Sec. 9.202. REGISTRATION OF REPRESENTATIVE TRUST OFFICE. Requires an out-of-state trust institution that does not maintain a branch or trust office in this state and that desires to establish or acquire and maintain a representative trust to fulfill certain conditions. Authorizes the notificant to commence business at the representative trust office on the 31st day after the commissioner receives the notice, unless otherwise specified by the banking commissioner. Provides that the review period may be extended by the banking commissioner if a determination is made that more information or in depth analyses are made, and the representative trust company may commence business before the end of the review period upon approval from the banking commissioner. Authorizes the banking commissioner to deny approval of the representative trust office, upon a review of all pertinent information, if the banking commissioner makes certain findings regarding financial stability. Requires certain institutions that do not maintain a branch in this state to comply with this section, as well as fulfill certain other conditions. Provides that an out-of-state trust institution that fails to register as required is subject to Chapter 6C of this Act.

SUBCHAPTER D. SUPERVISION OF OUT-OF-STATE TRUST COMPANY

Sec. 9.301. COOPERATIVE AGREEMENTS; FEES. Authorizes the banking commissioner

to require certain conditions in order to carry out the purpose of this Act. Authorizes supervisory and examination fees assessed by the banking commissioner to be shared with various other supervisory agencies or organizations affiliated with or representing one or more supervisory agencies. Authorizes the banking commissioner to receive a portion of supervisory or examination fees assessed by another supervisory agency in accordance with an agreement between the banking commissioner and the agency.

Sec. 9.302. EXAMINATIONS; PERIODIC REPORTS. Authorizes the banking commissioner to conduct periodic examinations to ensure compliance of the laws by the trust companies and trust representative offices. Authorizes the finance commission by rule to prescribe requirements for periodic reports regarding a trust office or trust representative office in this state. Provides that the reports enable the banking commissioner to discharge the responsibilities of the banking commissioner.

Sec. 9.303. INTERPRETIVE STATEMENTS AND OPINIONS. Provides that to encourage the effective coordination and implementation of home state laws and host state laws with respect to interstate trust business, the banking commissioner, through certain individuals, may issue certain statements or opinions with respect to trusts. Requires the responsibilities of the banking commissioner are delegated to other commissioners in regard to certain other financial institutions.

Sec. 9.304. CONFIDENTIAL INFORMATION. Provides that information obtained by the banking commissioner with respect to all aspects of and matters regarding a trust is confidential and may not be disclosed.

Sec. 9.305. ENFORCEMENT; APPEALS. Establishes that the banking commissioner may determine that a violation has been committed by an out-of-state- trust company. Sets forth the required actions of the banking commissioner regarding a violation. Authorizes the banking commissioner to enforce a trust institution by appropriate judicial action.

Sec. 9.306. NOTICE OF SUBSEQUENT EVENT. Requires each out-of-state trust company that has established and maintains an office in this state pursuant this Act to give written notice within an established time frame to the banking commissioner regarding substantial and significant transactions.

ARTICLE 4. CONFORMING AMENDMENTS TO TRUST LAW

SECTION 4.001. Amends Sections 1.002(a)(11), (46), and (52)-(54), Article 342a-1.001 et seq., V.T.C.S., to redefine “company,” “state trust company,” “trust company,” “unauthorized trust activity,” and to define “trust institution.” Makes conforming changes.

SECTION 4.002. Amends Section 1.003(a), Article 342a-1.001 et seq., V.T.C.S., to delete text regarding a state or national bank exercising fiduciary power. Makes conforming changes.

SECTION 4.003. Amends Section 2.001, and adds Sections 2.0011 and 2.0012, Article 342a-1.001 et seq., V.T.C.S., as follows:

Sec. 2.001. New heading: ISSUANCE OF INTERPRETIVE STATEMENT. Deletes text regarding the filing of certain statements. Makes conforming changes.

Sec. 2.0011. ISSUANCE OF OPINION. Makes conforming changes.

Sec. 2.0012. EFFECT OF INTERPRETIVE STATEMENT OR OPINION. Makes a conforming change.

SECTION 4.004. Amends Section 3.001(a), Article 342a-1.001 et seq., V.T.C.S., to make conforming changes.

SECTION 4.005. Amends Section 3.005(e), Article 342a-1.001 et seq., V.T.C.S., to make conforming changes.

SECTION 4.006. Amends Section 3.022, Article 342a-1.001 et seq., V.T.C.S., to make conforming

changes.

SECTION 4.007. Amends Section 3.203(a), Article 342a-1.001 et seq., V.T.C.S., to make conforming changes.

SECTION 4.008. Amends Section 3.302(c), Article 342a-1.001 et seq., V.T.C.S., to make conforming changes.

SECTION 4.009. Amends Section 3.401, Article 342a-1.001 et seq., V.T.C.S., to make conforming changes.

SECTION 4.010. Amends Section 3.405, Article 342a-1.001 et seq., V.T.C.S., to make conforming changes.

SECTION 4.011. Amends Chapter 3F, Article 342a-1.001 et seq., V.T.C.S, as follows:

SUBCHAPTER F. New heading: EXIT OF STATE TRUST COMPANY OR ENTRY OF
ANOTHER TRUST INSTITUTION

Sec. 3.501. New heading: MERGER OR CONVERSION OF STATE TRUST COMPANY INTO ANOTHER TRUST INSTITUTION EXERCISING FIDUCIARY POWERS. Makes conforming changes.

Sec. 3.502. CONVERSION OF TRUST INSTITUTION INTO STATE TRUST COMPANY. Authorizes a trust institution to apply to the banking commissioner for conversion into a state trust company on a prescribed form and accompanied by required fees. Authorizes a trust association or limited trust association to convert its organizational form under this section. Authorizes a trust institution trying to convert into a state trust company to receive a certificate of authority to do business as a state trust company if the banking commissioner makes certain findings. Authorizes the banking commissioner to request and require certain information and examination fees. Sets forth requirements for the converting trust institution.

SECTION 4.012. Amends Section 6.003(a), Article 342a-1.001 et seq., V.T.C.S., to delete text regarding affairs of a state trust and certain financial institutions.

SECTION 4.013. Amends Section 6.007(a), Article 342a-1.001 et seq., V.T.C.S., to make conforming changes.

SECTION 4.014. Amends Section 6.202(b), Article 342a-1.001 et seq., V.T.C.S., to make conforming changes.

SECTION 4.015. Amends Section 7.101(b), Article 342a-1.001 et seq., V.T.C.S., to make conforming changes.

SECTION 4.016. Amends Section 7.102, Article 342a-1.001 et seq., V.T.C.S., to make conforming changes.

SECTION 4.017. Amends Section 7.105(d), Article 342a-1.001 et seq., V.T.C.S., to make conforming changes.

SECTION 4.018. Amends Section 7.205(a), Article 342a-1.001 et seq., V.T.C.S., to make conforming changes.

SECTION 4.019. Amends Section 8.002, Article 342a-1.001 et seq., V.T.C.S., to delete text regarding state trust companies appeals and the affect of certain conditions regarding collection of money judgment. Makes conforming changes.

SECTION 4.020. Amends Section 8.004, Article 342a-1.001 et seq., V.T.C.S., to make conforming changes.

SECTION 4.021. Amends Section 8.005(a), Article 342a-1.001 et seq., V.T.C.S., to make conforming

changes.

SECTION 4.022. Amends Section 8.006, Article 342a-1.001 et seq., V.T.C.S., to make conforming changes.

SECTION 4.023. Amends Section 8.007, Article 342a-1.001 et seq., V.T.C.S., to make conforming changes.

SECTION 4.024. Amends Section 8.008, Article 342a-1.001 et seq., V.T.C.S., to delete certain definitions and compliance review. Makes conforming changes.

SECTION 4.025. Amends Section 8.009, Article 342a-1.001 et seq., V.T.C.S., to make conforming changes.

SECTION 4.026. Amends Section 115.002, Property Code, to provide that if there is a single, noncorporate trustee, an action shall be brought in the county that fulfills certain conditions. Establishes that if there are multiple trustees, or a corporate trustee, an action shall be brought in a certain county. Authorizes the court to transfer an action from a county of proper venue to another county providing certain reasonable and just cause. Authorizes the court to transfer an action providing an agreement by all parties. Defines “corporate trustee,” “principal office,” and “situs of administration.”

ARTICLE 5. PUBLIC DEPOSITS

SECTION 5.001. Amends Section 4.102, Business and Commerce Code, by adding Subsection (c), to provide that the laws of this state govern a deposit contract between a bank and a consumer account holder if the branch or separate office of the bank that accepts the deposit contract is located in this state. Defines “consumer account holder.”

SECTION 5.002. Amends Section 45.201(2), Education Code, to redefine “bank.”

SECTION 5.003. Amends Section 404.023, Government Code, to require the comptroller to designate one or more state depository banks that have main offices or branches in centrally located cities in this state to be used for clearing checks and other obligations due the state.

SECTION 5.004. Amends Section 404.024(g), Government Code, to make conforming changes.

SECTION 5.005. Amends Section 404.031(f), Government Code, to make conforming changes.

SECTION 5.006. Amends Section 2257.024(a), Government Code, to make conforming changes.

SECTION 5.007. Amends Section 2257.041(d), Government Code, to make conforming changes.

SECTION 5.008. Amends Section 105.001(1), (12), and (13), Local Government Code, to redefine “bank,” “savings association,” and “state bank.”

SECTION 5.009. Amends Section 116.001(1), Local Government Code, to redefine “bank.”

SECTION 5.010. Amends Section 131.001, Local Government Code, to make conforming changes.

SECTION 5.011. Amends 131.005(a), Local Government Code, to make conforming changes.

SECTION 5.012. Amends Section 131.901(a), Local Government Code, to provide that an out-of-state financial institution is not considered to be located outside this state to the extent the governing body designates a branch office of such institution that is located in this state.

SECTION 5.013. Amends Section 161.173(a), Natural Resources Code, to make conforming changes.

SECTION 5.014. Amends Section 223.010(b) and (d), Transportation Code, to make conforming changes.

SECTION 5.015. Amends Section 361.178, Transportation Code, to make conforming changes.

ARTICLE 6. AMENDMENTS TO PROBATE CODE

SECTION 6.001. Amends Section 3(d), Probate Code, to redefine “corporate fiduciary.”

SECTION 6.002. Amends Section 105A, Probate Code, to set forth provisions for a corporate fiduciary that does not have its main office or a branch office in this state, hereinafter called “foreign corporate fiduciaries.” Deletes text regarding “foreign banks or trust companies”; and the establishment of foreign bank or trust companies in the state. Makes conforming changes.

SECTION 6.003. Amends Subsection 5, Section 194, Probate Code, to make conforming changes.

SECTION 6.004. Amends Section 389(b), Probate Code, to make conforming changes.

SECTION 6.005. Amends Section 601(5), Probate Code, to redefine “corporate fiduciary.”

SECTION 6.006. Amends Sections 703(e) and (g), Probate Code, to make conforming changes.

SECTION 6.007. Amends Section 855(b), Probate Code, to make conforming changes.

ARTICLE 7. CIVIL PROCESS

SECTION 7.001. Amends Section 30.007, Civil Practice and Remedies Code, to provide that civil discovery of a customer record maintained by a financial institution is governed by Section 59.006, Finance Code. Deletes definition and text regarding the production of financial institution records.

SECTION 7.002. Amends Chapter 31.002, Civil Practice and Remedies Code, by adding subsection (g), to provide that the rights of a receiver do not attach until the financial institution receives service of the order of receivership in the manner specified in Section 59.008, Financial Code.

SECTION 7.003. Amends Chapter 61C, Civil Practice and Remedies Code, by adding Section 61.045, as follows:

Sec. 61.045. ATTACHMENT OF PERSONALTY HELD BY FINANCIAL INSTITUTION. Provides that service of a writ of attachment on a financial institution relating to personal property held by a financial institution in the name of or on behalf of a customer of the financial institution is governed by Section 59.008, Financial Code.

SECTION 7.004. Amends Chapter 63, Civil Practice and Remedies Code, by adding Section 63.008, as follows:

Sec. 63.008. FINANCIAL INSTITUTION AS GARNISHEE. Establishes service of a writ of garnishment on a financial institution named as the garnishee in the writ.

SECTION 7.005. Amends Chapter 64C, Civil Practice and Remedies Code, by adding Section 64.036, as follows:

Sec. 64.036. RECEIVERSHIP PROPERTY HELD BY FINANCIAL INSTITUTION. Establishes that the service or delivery of a notice of receivership, or a demand or instruction by or on behalf of a receiver, relating to receivership property held by a financial institution in the name of or on behalf of a customer of the financial institution is governed by Section 59.008, Financial Code.

SECTION 7.006. Amends Chapter 65A, Civil Practice and Remedies Code, by adding Section 65.002, as follows:

Sec. 65.002. RESTRAINING ORDER OR INJUNCTION AFFECTING CUSTOMER OF FINANCIAL INSTITUTION. Provides that service or delivery of a restraining order or injunction affecting property held by a financial institution in the name of a customer of the financial institution is governed by Section 59.008, Financial Code.

SECTION 7.007. Amends Section 157.317(a), Family Code, to provide that service of a lien notice on a financial institution relating to property held by the financial institution in the name of or on behalf of an obligor who is a customer of the financial institution is governed by Section 59.008, Financial Code.

SECTION 7.008. Amends Section 111.017, Tax Code, to provide that services or delivery under this section affecting property held by financial institutions in the name or on behalf of a delinquent who is a customer of the financial institution is governed by Section 59.008, Financial Code.

SECTION 7.009. Amends Section 111.021(e), Tax Code, to make conforming changes.

ARTICLE 8. TRANSITION, EFFECTIVE DATE, EMERGENCY

SECTION 8.001. Provides that an interstate branch or other office of an out-of-state financial institution that exists in this state on the effective date of this Act, must file certain required documentation and information, before January 1, 2000. Requires an out-of-state trust institution that exists in this state on the effective date of this Act, to file certain required documentation and information, before January 1, 2000.

SECTION 8.002. (a) Repealers: Sections 31.002(a)(26) and (27), 31.008, and 32.0095, and Chapters 38, 39, and 272, Finance Code (regarding definitions of “foreign bank agency” and “foreign bank corporation”; attachment, injunction, execution, and garnishment; parity between state and national banks, bank holding companies, foreign bank agencies and representative offices, disclosure by uninsured institution).

(b) Repealers: Articles 342a-1.002(a)(3), (6), (16), (20), and 3.021, V.T.C.S. (regarding definitions of “bank,” “branch,” “equity capital,” and “foreign corporation”; foreign corporations exercising trust power).

SECTION 8.003. Provides that if this Act conflicts with another Act, adopting a nonsubstantive revision of statutes relating to financial institutions and practices prevails.

SECTION 8.004. Effective date: September 1, 1999.

SECTION 8.005. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.001

Amends Section 204.201, Finance Code, to require a statement of registration to contain as an exhibit or attachment certain notices or applications, authenticated articles of incorporation, certain other documentation, and evidence of compliance.

SECTION 2.006.

Amends Section 32.010, Finance Code, to prohibit this section from being used by a Texas state bank to alter or negate the application of the laws of this state with respect to certain conditions including real estate development, marketing, and sales activities in this state.

SECTION 2.0115.

Amends Section 33.103, Finance Code, by adding Subsection (f), to authorize the banking commissioner in the exercise of discretion to waive or reduce the residency requirements for certain directors.

SECTION 3.002.

Amends Section 9.102, V.T.C.S., to authorize a de novo trust office to be established through the acquisition of a trust office in this state of an existing trust institution, subject to Subsection (a).

Amends Section 9.105, V.T.C.S., to authorize the out-of-state trust company to commence business at the trust office after the 61st day after the banking commissioner notifies the company that all requirements are met, unless the banking commissioner specifies a different date.

Amends Section 9.201, V.T.C.S., to make a nonsubstantive change.

Amends Section 9.202, V.T.C.S., to authorize the notificant to commence business on a specific date after the banking commissioner receives the notice unless the banking commissioner specifies otherwise.

SECTION 5.014.

Amends Section 223.010(d), Transportation Code, to make conforming changes.