

## **BILL ANALYSIS**

H.B. 1962  
By: Orr  
Financial Institutions  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Over time, state statutes can develop inconsistencies or become obsolete due to changes in other state and federal law or developments in case law. These developments occur frequently with respect to regulation of financial institutions because of the complex interrelationship between applicable state and federal law. H.B. 1962 makes technical corrections and amendments to Title 3, Finance Code, to address accumulated inconsistencies and errors identified in the following paragraphs.

Current Texas law with respect to "limited banking associations" is inconsistent with a regulation adopted by the Federal Deposit Insurance Corporation (FDIC) in 2003 regarding the eligibility of a state bank chartered as a limited liability company for deposit insurance, codified at 12 C.F.R. §303.15.

Subtitles A and F, Title 3, Finance Code, incorporate the Texas Business Corporation Act and other business entity statutes by reference to apply to state banks and trust companies, laws that are now relocated and codified into the Business Organizations Code.

Chapter 274, Finance Code, empowers a bank holding company to allocate and redistribute fiduciary appointments possessed by one of its subsidiary institutions to another of its subsidiary institutions as successor or substitute fiduciary, subject to certain safeguards. Certain definitions in that chapter are technically inadequate because they inadvertently exclude certain national banks and could be interpreted to exclude certain state trust companies organized as limited liability companies.

Several cross-references in Title 3, Finance Code, have been rendered incorrect by subsequent legislation:

- Sections 34.104(b) and (c), Finance Code, contain cross-references to specific subsections of Section 34.101 but 2001 legislation altered subsection numbering and arrangement in Section 34.101 (Section 9, Chapter 528, Acts of the 77th Legislature, Regular Session, 2001).
- Section 202.005, Finance Code, authorizes enforcement actions against a bank holding company for violations of "this subtitle". Section 202.005 was no substantively relocated from Subtitle A to new Subtitle G of Title 3 in 1999 (Section 1.001, Chapter 344, Acts of the 76th Legislature, Regular Session, 1999). The reference to "this subtitle" now refers to Subtitle G rather than Subtitle A as originally intended.
- Section 182.021(11), Finance Code, exempts the licensed sale of checks under Chapter 152 from trust company regulation. Regulation of the sale of checks is now under the Money Services Act in Chapter 151, Finance Code (Chapter 1099, Acts of the 79th Legislature, Regular Session, 2005).

H.B. 1962 provides for the application of the Business Organizations Code to certain financial institutions and the regulation of those institutions by the Texas Department of Banking.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission in Section 12, Section 16, Section 68, and Section 69 of this bill.

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## **ANALYSIS**

H.B. 1962 amends Title 3, Finance Code to require a Texas limited banking association must possess the four traditional, corporate characteristics of perpetual succession, centralized management, limited liability and free transferability of interests, as required by 12 C.F.R. §303.15, and repeals obsolete definitions. The bill further simplifies terminology applicable to a limited banking association throughout Subtitle A, Title 3, Finance Code.

The bill revises references to the Texas Business Corporations Act and other business entity statutes in Subtitles F and G, Title 3, Finance Code, to refer to the Business Organizations Code. The bill further authorizes the finance commission to adopt rules permitting a state bank or trust company to make an early election to be governed by the Business Organizations Code.

The bill clarifies that Chapter 274, Finance Code, applies to national banks with trust powers only and to state trust companies. The bill corrects several cross-references in Title 3, Finance Code, to refer to the proper citations.

## **EFFECTIVE DATE**

September 1, 2007