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H.B. No. 2754

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the regulation of state banks and state trust
3 companies.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 32.002(a), Finance Code, is amended to
6 read as follows:

7 (a) The articles of association of a state bank must be
8 signed and acknowledged by each organizer and must contain:

9 (1) the name of the bank, subject to Subsection (b);

10 (2) the period of the bank's duration, which may be
11 perpetual, subject to Subsection (c);

12 (3) the powers of the bank, which may be stated as:

13 (A) all powers granted by law to a state bank; or

14 (B) a list of the specific powers under Section
15 32.001 that the bank chooses to exercise;

16 (4) the aggregate number of shares or participation
17 shares that the bank will be authorized to issue and the number of
18 classes of shares or participation shares, which may be one or more;

19 (5) if the shares or participation shares are to be
20 divided into classes:

21 (A) the designation of each class and statement
22 of the preferences, limitations, and relative rights of the shares
23 or participation shares of each class, which in the case of a
24 limited banking association may be more fully set forth in the

1 participation agreement;

2 (B) the number of shares or participation shares
3 of each class; and

4 (C) a statement of the par value of the shares or
5 participation shares of each class or that the shares or
6 participation shares are to be without par value;

7 (6) any provision limiting or denying to shareholders
8 or participants the preemptive right to acquire additional or
9 treasury shares or participation shares of the bank;

10 (7) any provision granting the right of shareholders
11 or participants to cumulative voting in the election of directors
12 or managers;

13 (8) the aggregate amount of consideration to be
14 received for all shares or participation shares initially issued by
15 the bank and a statement that:

16 (A) all authorized shares or participation
17 shares have been subscribed; and

18 (B) all subscriptions received have been
19 irrevocably [~~provide for the consideration to be fully~~] paid in
20 cash [~~before issuance of the charter~~];

21 (9) any provision consistent with law that the
22 organizers elect to set forth in the articles of association for the
23 regulation of the internal affairs of the bank or that is otherwise
24 required by this subtitle to be set forth in the articles of
25 association;

26 (10) the street address of the bank's initial home
27 office; and

1 (11) either:

2 (A) the number of directors or managers
3 constituting the initial board and the names and street addresses
4 of the persons who are to serve as directors or managers until the
5 first annual meeting of shareholders or participants or until
6 successor directors or managers have been elected and qualified; or

7 (B) the statement described by Subsection (d).

8 SECTION 2. Sections 32.004(b) and (c), Finance Code, are
9 amended to read as follows:

10 (b) At the expense of the organizers, the banking
11 commissioner shall thoroughly investigate the application. The
12 banking commissioner shall prepare a written report of the
13 investigation[~~, and any person, other than a person protesting~~
14 ~~under Section 32.005, may request a copy of the nonconfidential~~
15 ~~portions of the application and written report as provided by~~
16 ~~Chapter 552, Government Code].~~

17 (c) Rules adopted under this subtitle may specify the
18 confidential or nonconfidential character of information obtained
19 or prepared by the department under this chapter. Except as
20 provided by Subchapter D, Chapter 31, or in rules regarding
21 confidential information, the business plan of the applicant and
22 the financial statement of a proposed officer, director, manager,
23 or managing participant are ~~is~~ confidential and not subject to
24 public disclosure.

25 SECTION 3. Sections 32.005(a) through (d), Finance Code,
26 are amended to read as follows:

27 (a) A protest of a charter application must be received by

1 the department before the 15th day after the date the organizers
2 publish notice under Section 32.004(a) and must be accompanied by
3 the fees and deposits required by law. If the protest is untimely,
4 the department shall return all submitted fees and deposits to the
5 protesting party. If the protest is timely, the department shall
6 notify the applicant of the protest and mail or deliver a complete
7 copy of the nonconfidential sections of the charter application to
8 the protesting party before the 15th day after the later of the date
9 of receipt of the protest or receipt of the charter application [~~Any~~
10 ~~person may file a protest of an application~~].

11 (b) A protesting party must file a detailed protest
12 responding to each contested statement contained in the
13 nonconfidential portion of the application not later than the 20th
14 day after the date the protesting party receives the application
15 from the department, and relate each statement and response to the
16 standards for approval set forth in Section 32.003(b). The
17 applicant must file a written reply to the protesting party's
18 detailed response on or before the 10th day after the date the
19 response is filed. The protesting party's response and the
20 applicant's reply must be verified by affidavit and must certify
21 that a copy was served on the opposing party. If applicable,
22 statements in the response and in the reply may be supported by
23 references to data available in sources of which official notice
24 may properly be taken. Any comment received by the department and
25 any reply of the applicant to the comment shall be made available to
26 the protesting party [~~If a protest of the application is not filed~~
27 ~~before the 15th day after the date the organizers publish notice~~

1 ~~under Section 32.004(a), the banking commissioner may immediately~~
2 ~~determine whether the necessary conditions set forth in Section~~
3 ~~32.003(b) have been established, based on the application and~~
4 ~~investigation. The banking commissioner shall approve the charter~~
5 ~~application or set the charter application for hearing].~~

6 (c) The banking commissioner may not be compelled to hold a
7 hearing before granting or denying the charter application. In the
8 exercise of discretion, the banking commissioner may consider
9 granting a hearing on a charter application at the request of the
10 applicant or a protesting party. The banking commissioner may order
11 a hearing regardless of whether a hearing has been requested by a
12 party. A party requesting a hearing must indicate with specificity
13 the issues involved that cannot be determined on the basis of the
14 record compiled under Subsection (b) and why the issues cannot be
15 determined. A request for hearing and the banking commissioner's
16 decision with regard to granting a hearing shall be made a part of
17 the record. If [a protest of the application is timely filed,
18 accompanied by the fees and deposits required by law, or if] the
19 banking commissioner sets a hearing, the banking commissioner shall
20 conduct a public hearing and one or more prehearing conferences and
21 opportunities for discovery as the banking commissioner considers
22 advisable and consistent with the applicable law, except that the
23 banking commissioner may not permit discovery of confidential
24 information in the charter application or the investigation report.
25 ~~[A person protesting the application is entitled to the~~
26 ~~confidential portion of the application, subject to a protective~~
27 ~~order that restricts the use of confidential information to the~~

1 ~~charter proceedings.]~~

2 (d) Based on the record [~~of the hearing~~], the banking
3 commissioner shall determine whether the application meets the
4 requirements of Section 32.003(b) and shall enter an order granting
5 or denying the charter.

6 SECTION 4. Sections 32.103(b) and (c), Finance Code, are
7 amended to read as follows:

8 (b) Unless restricted by rule, prior written approval is not
9 required for an increase in capital and surplus accomplished
10 through:

11 (1) issuance of shares of common stock [~~or their~~
12 ~~equivalent in participation shares~~] for cash, or a cash
13 contribution to surplus by shareholders that does not result in
14 issuance of additional common stock or other securities;

15 (2) declaration and payment of pro rata share
16 dividends as defined by the [~~Texas~~] Business Organizations Code
17 [~~Corporation Act~~]; or

18 (3) adoption by the board of a resolution directing
19 that all or part of undivided profits be transferred to capital or
20 surplus.

21 (c) Prior approval is not required for:

22 (1) a decrease in capital or surplus caused by losses
23 in excess of undivided profits; or

24 (2) a change in capital and surplus resulting from
25 accounting adjustments required by a transaction approved by the
26 banking commissioner if the accounting adjustments are reasonably
27 disclosed in the submitted application.

1 SECTION 5. Section 32.401, Finance Code, is amended to read
2 as follows:

3 Sec. 32.401. AUTHORITY TO PURCHASE ASSETS [~~OF ANOTHER~~
4 ~~FINANCIAL INSTITUTION~~]. (a) A state bank [~~with the prior written~~
5 ~~approval of the banking commissioner~~] may purchase [~~all or~~
6 ~~substantially all of the~~] assets from [of] another financial
7 institution or other seller, except that the prior written approval
8 of the banking commissioner is required if the purchase price
9 exceeds an amount equal to three times the bank's unimpaired
10 capital and surplus. The finance commission by rule may require a
11 state bank to obtain the prior written approval of the banking
12 commissioner for a transaction not otherwise subject to approval
13 that involves potentially substantial risks to the safety and
14 soundness of the purchasing bank.

15 (b) Except as otherwise expressly provided by another
16 statute, the purchase of all or part of the assets of the selling
17 entity [institution] does not make the purchasing bank responsible
18 for any liability or obligation of the selling entity [institution]
19 that the purchasing bank does not expressly assume.

20 [~~(c) Except as otherwise provided by this subtitle, this~~
21 ~~subchapter does not govern or prohibit the purchase by a state bank~~
22 ~~of all or part of the assets of a corporation or other entity that is~~
23 ~~not a financial institution.~~]

24 SECTION 6. Section 32.405, Finance Code, is amended to read
25 as follows:

26 Sec. 32.405. SALE OF ASSETS. (a) A state bank may sell a
27 portion of its assets to another financial institution or other

1 buyer, except that the prior written approval of the banking
2 commissioner is required if the sales price exceeds an amount equal
3 to three times the bank's unimpaired capital and surplus. The
4 finance commission by rule may require a state bank to obtain the
5 prior written approval of the banking commissioner for a
6 transaction not otherwise subject to approval that involves
7 potentially substantial risks to the safety and soundness of the
8 selling bank.

9 (b) If the prior approval of the banking commissioner for a
10 sale of assets is not required under Subsection (a) and the sale
11 involves the disposition of a branch office or another established
12 location of the state bank, the state bank must provide written
13 notice of the transaction to the banking commissioner at least 30
14 days before the expected closing date of the transaction.

15 (c) The board of a state bank, with the prior written
16 approval of the banking commissioner, may cause the bank to sell all
17 or substantially all of its assets without shareholder or
18 participant approval if:

19 (1) the banking commissioner finds the interests of
20 depositors and creditors are jeopardized because of insolvency or
21 imminent insolvency and that the sale is in their best interest; and

22 (2) the Federal Deposit Insurance Corporation or its
23 successor approves the transaction and agrees to provide assistance
24 to the prospective buyer under 12 U.S.C. Section 1823(c) or a
25 comparable law unless the deposits of the bank are not insured.

26 (d) [~~(b)~~] A sale under Subsection (c) [~~this section~~] must
27 include an assumption and promise by the buyer to pay or otherwise

1 discharge:

- 2 (1) all of the bank's liabilities to depositors;
- 3 (2) all of the bank's liabilities for salaries of the
4 bank's employees incurred before the date of the sale;
- 5 (3) obligations incurred by the banking commissioner
6 arising out of the supervision or sale of the bank; and
- 7 (4) fees and assessments due the department.

8 (e) [~~(c)~~] This section does not affect the banking
9 commissioner's right to take action under another law. The sale by
10 a state bank of all or substantially all of its assets with
11 shareholder or participant approval is considered a voluntary
12 dissolution and liquidation and is governed by Subchapter B,
13 Chapter 36.

14 SECTION 7. Section 32.501(c), Finance Code, is amended to
15 read as follows:

16 (c) The state bank does not cease to be a state bank subject
17 to the supervision of the banking commissioner unless:

18 (1) the banking commissioner has been given written
19 notice of the intention to merge or convert before the 31st day
20 before the date of the proposed transaction;

21 (2) [~~the bank has published notice of the transaction,~~
22 ~~in the form and frequency specified by the banking commissioner,~~
23 ~~in:~~

24 [~~(A) a newspaper of general circulation~~
25 ~~published in the county of its home office or, if such a newspaper~~
26 ~~is not published in the county, in an adjacent county, and~~

27 [~~(B) other locations that the banking~~

1 ~~commissioner considers appropriate,~~

2 ~~(3)~~ the bank has filed with the banking
3 commissioner:

4 (A) a copy of the application filed with the
5 successor regulatory authority, including a copy of each contract
6 evidencing or implementing the merger or conversion, or other
7 documents sufficient to show compliance with applicable law; and

8 (B) a certified copy of all minutes of board
9 meetings and shareholder or participant meetings at which action
10 was taken regarding the merger or conversion; ~~and~~

11 ~~[(C) a publisher's certificate showing
12 publication of the required notice,]~~

13 (3) ~~(4)~~ the banking commissioner determines that:

14 (A) all deposit and other liabilities of the
15 state bank are fully discharged, assumed, or otherwise retained by
16 the successor form of financial institution;

17 (B) any conditions imposed by the banking
18 commissioner for the protection of depositors and creditors have
19 been met or otherwise resolved; and

20 (C) any required filing fees have been paid; and

21 (4) ~~(5)~~ the bank has received a certificate of
22 authority to do business as the successor financial institution.

23 SECTION 8. Section 33.002(c), Finance Code, is amended to
24 read as follows:

25 (c) Rules adopted under this subtitle may specify the
26 confidential or nonconfidential character of information obtained
27 by the banking commissioner under this section. In the absence of

1 rules, information [~~Information~~] obtained by the banking
2 commissioner under this section is confidential and may not be
3 disclosed by the banking commissioner or any employee of the
4 department except as provided by Subchapter D, Chapter 31.

5 SECTION 9. Section 36.102, Finance Code, is amended to read
6 as follows:

7 Sec. 36.102. FILING RESOLUTIONS WITH BANKING
8 COMMISSIONER. After resolutions to dissolve and liquidate a state
9 bank have been adopted by the bank's board and shareholders or
10 participants, a majority of the directors, managers, or managing
11 participants shall verify and file with the banking commissioner
12 [~~duplicate~~] certified copies of:

13 (1) the resolutions of the shareholders or
14 participants that:

15 (A) are adopted at a meeting for which proper
16 notice was given or by unanimous written consent; and

17 (B) approve the dissolution and liquidation of
18 the bank;

19 (2) the resolutions of the board approving the
20 dissolution and liquidation of the bank if the bank is operated by a
21 board of directors or managers; and

22 (3) [~~a copy of~~] the notice to the shareholders or
23 participants informing them of the meeting.

24 SECTION 10. Section 182.002(a), Finance Code, is amended to
25 read as follows:

26 (a) The articles of association of a state trust company
27 must be signed and acknowledged by each organizer and must contain:

1 (1) the name of the state trust company, subject to
2 Subsection (b);

3 (2) the period of the state trust company's duration,
4 which may be perpetual;

5 (3) the powers of the state trust company, which may be
6 stated as:

7 (A) all powers granted to a state trust company
8 in this state; or

9 (B) a list of the specific powers that the state
10 trust company chooses and is authorized to exercise;

11 (4) the aggregate number of shares, or participation
12 shares in the case of a limited trust association, that the state
13 trust company will be authorized to issue, and the number of classes
14 of shares or participation shares, which may be one or more;

15 (5) if the shares or participation shares are to be
16 divided into classes:

17 (A) the designation of each class and statement
18 of the preferences, limitations, and relative rights of the shares
19 or participation shares of each class, which in the case of a
20 limited trust association may be more fully set forth in the
21 participation agreement;

22 (B) the number of shares or participation shares
23 of each class; and

24 (C) a statement of the par value of the shares or
25 participation shares of each class or that the shares or
26 participation shares are to be without par value;

27 (6) any provision limiting or denying to shareholders

1 or participants the preemptive right to acquire additional or
2 treasury shares or participation shares of the state trust company;

3 (7) any provision granting the right of shareholders
4 or participants to cumulative voting in the election of directors
5 or managers;

6 (8) the aggregate amount of consideration to be
7 received for all shares or participation shares initially issued by
8 the state trust company and a statement that:

9 (A) all authorized shares or participation
10 shares have been subscribed; and

11 (B) all subscriptions received have been
12 irrevocably [~~provide for the consideration to be fully~~] paid in
13 cash [~~before issuance of the charter~~];

14 (9) any provision consistent with law that the
15 organizers elect to set forth in the articles of association for the
16 regulation of the internal affairs of the state trust company or
17 that is otherwise required by this subtitle to be set forth in the
18 articles of association;

19 (10) the street address of the state trust company's
20 home office; and

21 (11) either:

22 (A) the number of directors or managers
23 constituting the initial board and the names and street addresses
24 of the persons who are to serve as directors or managers until the
25 first annual meeting of shareholders or participants or until
26 successor directors or managers have been elected and qualified; or

27 (B) the statement described by Subsection (c).

1 SECTION 11. Sections 182.004(b) and (c), Finance Code, are
2 amended to read as follows:

3 (b) At the expense of the organizers, the banking
4 commissioner shall thoroughly investigate the application and
5 inquire fully into the identity and character of each proposed
6 director, manager, officer, managing participant, and principal
7 shareholder or participant. The banking commissioner shall prepare
8 a written report of the investigation~~[, and any person, other than a~~
9 ~~person protesting under Section 182.005, may request a copy of the~~
10 ~~nonconfidential portions of the application and written report as~~
11 ~~provided by Chapter 552, Government Code].~~

12 (c) Rules adopted under this subtitle may specify the
13 confidential or nonconfidential character of information obtained
14 or prepared by the department under this section. Except as
15 provided by Subchapter D, Chapter 181, or in rules regarding
16 confidential information, the business plan of the applicant and
17 the financial statement of a proposed officer, director, manager,
18 or managing participant are ~~is~~ confidential and not subject to
19 public disclosure.

20 SECTION 12. Sections 182.005(a) through (d), Finance Code,
21 are amended to read as follows:

22 (a) A protest of a charter application must be received by
23 the department before the 15th day after the date the organizers
24 publish notice under Section 182.004(a) and must be accompanied by
25 the fees and deposits required by law. If the protest is untimely,
26 the department shall return all submitted fees and deposits to the
27 protesting party. If the protest is timely, the department shall

1 notify the applicant of the protest and mail or deliver a complete
2 copy of the nonconfidential sections of the charter application to
3 the protesting party before the 15th day after the later of the date
4 of receipt of the protest or receipt of the charter application [~~Any~~
5 ~~person may file a protest of an application with the banking~~
6 ~~commissioner~~].

7 (b) A protesting party must file a detailed protest
8 responding to each contested statement contained in the
9 nonconfidential portion of the application not later than the 20th
10 day after the date the protesting party receives the application
11 from the department, and relate each statement and response to the
12 standards for approval set forth in Section 182.003(b). The
13 applicant must file a written reply to the protesting party's
14 detailed response on or before the 10th day after the date the
15 response is filed. The protesting party's response and the
16 applicant's reply must be verified by affidavit and must certify
17 that a copy was served on the opposing party. If applicable,
18 statements in the response and in the reply may be supported by
19 references to data available in sources of which official notice
20 may properly be taken. Any comment received by the department and
21 any reply of the applicant to the comment shall be made available to
22 the protesting party [~~If a protest of the application is not filed~~
23 ~~on or before the 15th day after the last date the notice was~~
24 ~~published under Section 182.004, the banking commissioner may~~
25 ~~immediately determine whether all of the necessary conditions set~~
26 ~~forth in Section 182.003(b) have been established, based on the~~
27 ~~application and investigation. The banking commissioner shall~~

1 ~~approve the application for charter or set the charter application~~
2 ~~for hearing].~~

3 (c) The banking commissioner may not be compelled to hold a
4 hearing before granting or denying the charter application. In the
5 exercise of discretion, the banking commissioner may consider
6 granting a hearing on a charter application at the request of the
7 applicant or a protesting party. The banking commissioner may order
8 a hearing regardless of whether a hearing has been requested by a
9 party. A party requesting a hearing must indicate with specificity
10 the issues involved that cannot be determined on the basis of the
11 record compiled under Subsection (b) and why the issues cannot be
12 determined. A request for hearing and the banking commissioner's
13 decision with regard to granting a hearing shall be made a part of
14 the record. If [~~a protest of the application is timely filed,~~
15 ~~accompanied by the fees and deposits required by statute or rule, or~~
16 ~~if]~~ the banking commissioner sets a hearing, the banking
17 commissioner shall conduct a public hearing and as many prehearing
18 conferences and opportunities for discovery as the banking
19 commissioner considers advisable and consistent with governing
20 statutes and rules, except that the banking commissioner may not
21 permit discovery of confidential information in the charter
22 application or the investigation report. [~~A person protesting the~~
23 ~~application is entitled to the confidential portions of the~~
24 ~~application under a protective order that restricts the use of~~
25 ~~confidential information to the charter proceedings.]~~

26 (d) Based on the record [~~of the hearing]~~, the banking
27 commissioner shall determine whether all of the necessary

1 conditions set forth in Section 182.003(b) have been established
2 and shall enter an order granting or denying the charter.

3 SECTION 13. Sections 182.103(b) and (c), Finance Code, are
4 amended to read as follows:

5 (b) Unless otherwise restricted by rules, prior approval is
6 not required for an increase in restricted capital accomplished
7 through:

8 (1) issuance of shares of common stock or their
9 equivalent in participation shares for cash, or a cash contribution
10 to surplus by shareholders or participants that does not result in
11 issuance of additional common stock or other securities;

12 (2) declaration and payment of pro rata share
13 dividends as defined by the [~~Texas~~] Business Organizations Code
14 [~~Corporation Act~~]; or

15 (3) adoption by the board of a resolution directing
16 that all or part of undivided profits be transferred to restricted
17 capital.

18 (c) Prior approval is not required for:

19 (1) a decrease in restricted capital caused by
20 [~~incurred~~] losses in excess of undivided profits; or

21 (2) a change in restricted capital resulting from
22 accounting adjustments required by a transaction approved by the
23 banking commissioner if the accounting adjustments are reasonably
24 disclosed in the submitted application.

25 SECTION 14. Section 182.401, Finance Code, is amended to
26 read as follows:

27 Sec. 182.401. AUTHORITY TO PURCHASE ASSETS [~~OF ANOTHER~~

1 ~~TRUST INSTITUTION~~]. (a) A state trust company [~~with the prior~~
2 ~~written approval of the banking commissioner~~] may purchase [~~all or~~
3 ~~substantially all of the~~] assets from [~~of~~] another trust
4 institution, including the right to control accounts established
5 with the trust institution, or assets from another seller, except
6 that the prior written approval of the banking commissioner is
7 required if the purchase price exceeds an amount equal to three
8 times the sum of the trust company's equity capital less intangible
9 assets. The finance commission by rule may require a state trust
10 company to obtain the prior written approval of the banking
11 commissioner for a transaction not otherwise subject to approval
12 that involves potentially substantial risks to the safety and
13 soundness of the purchasing trust company.

14 (b) Except as otherwise expressly provided by this section
15 or another statute, the purchase of all or part of the assets of the
16 selling entity [~~trust institution~~] does not make the purchasing
17 state trust company responsible for any liability or obligation of
18 the selling entity [~~trust institution~~] that the purchasing state
19 trust company does not expressly assume.

20 (c) If prior approval of the banking commissioner is
21 required [~~Except as otherwise provided by this subtitle, this~~
22 ~~subchapter does not govern or prohibit the purchase by a state trust~~
23 ~~company of all or part of the assets of a corporation or other~~
24 ~~entity that is not a trust institution.~~

25 [~~(d) To make a purchase~~] under this section, an application
26 in the form required by the banking commissioner must be filed with
27 the banking commissioner. The banking commissioner shall

1 investigate the condition of the purchaser and seller and may
2 require the submission of additional information as considered
3 necessary to make an informed decision.

4 (d) [~~(e)~~] The banking commissioner shall approve the
5 application to purchase if:

6 (1) the purchasing state trust company:

7 (A) has complied with all applicable statutes and
8 rules; and

9 (B) will be solvent and have sufficient
10 capitalization for its business and location;

11 (2) all fiduciary obligations and liabilities of each
12 trust institution that is a party to the purchase or sale of assets
13 have been properly discharged or otherwise lawfully assumed or
14 retained by a trust institution or other fiduciary;

15 (3) all conditions imposed by the banking commissioner
16 have been satisfied or otherwise resolved; and

17 (4) all fees and costs have been paid.

18 (e) [~~(f)~~] A purchase subject to prior approval is effective
19 on the date of approval unless the purchase agreement provides for
20 and the banking commissioner consents to a different effective
21 date.

22 (f) If the purchase transaction includes all or
23 substantially all of the assets of another trust institution or
24 other fiduciary, the [~~(g) The~~] acquiring state trust company shall
25 succeed by operation of law to all of the rights, privileges, and
26 fiduciary obligations of the selling trust institution or other
27 fiduciary under each account included in the assets acquired.

1 SECTION 15. Section 182.405, Finance Code, is amended to
2 read as follows:

3 Sec. 182.405. SALE OF ASSETS. (a) A state trust company
4 may sell all or any portion of its assets to another trust
5 institution or other buyer, except that the prior written approval
6 of the banking commissioner is required if the sales price exceeds
7 an amount equal to three times the sum of the trust company's equity
8 capital less intangible assets. The finance commission by rule may
9 require a state trust company to obtain the prior written approval
10 of the banking commissioner for a transaction not otherwise subject
11 to approval that involves potentially substantial risks to the
12 safety and soundness of the selling trust company.

13 (b) If the prior approval of the banking commissioner for a
14 sale of assets is not required under Subsection (a) and the sale
15 involves the disposition of an established location of the state
16 trust company, the state trust company must provide written notice
17 of the transaction to the banking commissioner at least 30 days
18 before the expected closing date of the transaction.

19 (c) The board of a state trust company, with the banking
20 commissioner's approval, may cause the state trust company to sell
21 all or substantially all of its assets, including the right to
22 control accounts established with the state trust company, without
23 shareholder or participant approval if:

24 (1) the banking commissioner finds that the interests
25 of the state trust company's clients, depositors, and creditors are
26 jeopardized because of the hazardous condition of the state trust
27 company and that the sale is in their best interest; and

1 (2) the Federal Deposit Insurance Corporation or its
2 successor approves the transaction, if the deposits of the state
3 trust company are insured.

4 (d) [~~(b)~~] A sale under Subsection (c) [~~this section~~] must
5 include an assumption and promise by the buyer to pay or otherwise
6 discharge:

7 (1) all of a state trust company's liabilities to
8 clients and depositors;

9 (2) all of the state trust company's liabilities for
10 salaries of the state trust company's employees incurred before the
11 date of the sale;

12 (3) obligations incurred by the banking commissioner
13 arising out of the supervision or sale of the state trust company;
14 and

15 (4) fees and assessments due the department.

16 (e) [~~(c) This section does not limit the incidental power of~~
17 ~~a state trust company to buy and sell assets in the ordinary course~~
18 ~~of business.~~

19 [~~(d)~~] This section does not affect the banking
20 commissioner's right to take action under another law. The sale by
21 a state trust company of all or substantially all of its assets with
22 shareholder or participant approval is considered a voluntary
23 dissolution and liquidation and is governed by Subchapter B,
24 Chapter 186.

25 (f) Each buyer in a transaction described by Subsection (c)
26 that is a [~~(e) The acquiring~~] trust institution or other fiduciary
27 shall succeed by operation of law to all of the rights, privileges,

1 and fiduciary obligations of the selling state trust company under
2 each account included in the assets acquired.

3 SECTION 16. Section 182.501(c), Finance Code, is amended to
4 read as follows:

5 (c) The state trust company does not cease to be a state
6 trust company subject to the supervision of the banking
7 commissioner unless:

8 (1) the banking commissioner has been given written
9 notice of the intention to merge or convert before the 31st day
10 before the date of the proposed transaction;

11 ~~(2) [the state trust company has published notice of~~
12 ~~the transaction, in the form and frequency specified by the banking~~
13 ~~commissioner, in:~~

14 ~~[(A) a newspaper of general circulation~~
15 ~~published in the county of its home office or, if such a newspaper~~
16 ~~is not published in the county, in an adjacent county; and~~

17 ~~[(B) other locations that the banking~~
18 ~~commissioner considers appropriate;~~

19 ~~[(3)]~~ the state trust company has filed with the
20 banking commissioner:

21 (A) a copy of the application filed with the
22 successor regulatory authority, including a copy of each contract
23 evidencing or implementing the merger or conversion, or other
24 documents sufficient to show compliance with applicable law; and

25 (B) a certified copy of all minutes of board
26 meetings and shareholder or participant meetings at which action
27 was taken regarding the merger or conversion; ~~and~~

1 ~~[(C) a publisher's certificate showing~~
2 ~~publication of the required notice,]~~

3 (3) ~~[(4)]~~ the banking commissioner determines that:

4 (A) all accounts and liabilities of the state
5 trust company are fully discharged, assumed, or otherwise retained
6 by the successor trust institution;

7 (B) any conditions imposed by the banking
8 commissioner for the protection of clients and creditors have been
9 met or otherwise resolved; and

10 (C) any required filing fees have been paid; and

11 (4) ~~[(5)]~~ the state trust company has received a
12 certificate of authority to do business as the successor trust
13 institution.

14 SECTION 17. Section 183.002(c), Finance Code, is amended to
15 read as follows:

16 (c) Rules adopted under this subtitle may specify the
17 confidential or nonconfidential character of information obtained
18 by the banking commissioner under this section. In the absence of
19 rules, information ~~[Information]~~ obtained by the banking
20 commissioner under this section is confidential and may not be
21 disclosed by the banking commissioner or any employee of the
22 department except as provided by Subchapter D, Chapter 181.

23 SECTION 18. Section 186.102, Finance Code, is amended to
24 read as follows:

25 Sec. 186.102. FILING RESOLUTIONS WITH BANKING
26 COMMISSIONER. After resolutions to dissolve and liquidate a state
27 trust company have been adopted by the board and shareholders or

1 participants, a majority of the directors, managers, or managing
2 participants shall verify and file with the banking commissioner
3 [~~duplicate~~] certified copies of:

4 (1) the resolutions of the shareholders or
5 participants that:

6 (A) are adopted at a meeting for which proper
7 notice was given or by unanimous written consent; and

8 (B) approve the dissolution and liquidation of
9 the state trust company;

10 (2) the resolutions of the board approving the
11 dissolution and liquidation of the state trust company if the trust
12 company is operated by a board of directors or managers;

13 (3) [~~a copy of~~] the notice to the shareholders or
14 participants informing them of the meeting described by Subdivision
15 (1)(A); and

16 (4) a plan of liquidation.

17 SECTION 19. This Act takes effect September 1, 2007.