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(Flynn)

S.B. No. 875

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of state trust companies.

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

SECTION 1. Section 181.002(a), Finance Code, is amended by adding Subdivision (15-a) and amending Subdivision (25) to read as follows:

(15-a) "Equity capital" means the amount by which the total assets of a state trust company exceed the total liabilities of the trust company.

(25) "Insolvent" means a circumstance or condition in which a state trust company:

(A) is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities;

(B) has equity capital that is 50 percent or less of the amount of restricted capital the trust company is required to maintain [~~less than \$500,000, as determined under regulatory accounting principles~~];

(C) fails to maintain deposit insurance for its deposits with the Federal Deposit Insurance Corporation or its successor, or fails to maintain adequate security for its deposits as provided by Section 184.301(c);

(D) sells or attempts to sell substantially all

1 of its assets or merges or attempts to merge substantially all of
2 its assets or business with another entity other than as provided by
3 Chapter 182; or

4 (E) attempts to dissolve or liquidate other than
5 as provided by Chapter 186.

6 SECTION 2. Section 181.104(a), Finance Code, is amended to
7 read as follows:

8 (a) The banking commissioner shall examine each state trust
9 company annually, or on another periodic basis as may be required by
10 rule or policy, or as the commissioner considers necessary to:

11 (1) safeguard the interests of clients, creditors,
12 shareholders, participants, or participant-transferees; and

13 (2) efficiently enforce applicable law.

14 SECTION 3. Section 181.107(c), Finance Code, is amended to
15 read as follows:

16 (c) A [~~Except for portions designated to be confidential by~~
17 ~~the banking commissioner, a~~] statement of condition and income is a
18 public record except for:

19 (1) portions of the statement designated confidential
20 by the banking commissioner; and

21 (2) the statement of condition and income for a state
22 trust company exempt under Section 182.011 or 182.019 with regard
23 to the period during which the exemption is in effect.

24 SECTION 4. Section 182.008(a), Finance Code, is amended to
25 read as follows:

26 (a) The banking commissioner may not issue a charter to a
27 state trust company having restricted capital of less than \$2 [~~\$1~~]

1 million.

2 SECTION 5. Section 182.011, Finance Code, is amended by
3 amending Subsections (a), (d), and (e) and adding Subsection (a-1)
4 to read as follows:

5 (a) A state trust company may request in writing that it be
6 exempted from specified provisions of this subtitle. The banking
7 commissioner may grant the exemption in whole or in part, subject to
8 Subsection (c), if the banking commissioner finds that the state
9 trust company ~~[does not transact business with the public. A state~~
10 ~~trust company does not transact business with the public if it does~~
11 ~~not make any sale, solicitation, arrangement, agreement, or~~
12 ~~transaction to provide a trust or other business service, whether~~
13 ~~or not for a fee, commission, or any other type of remuneration,~~
14 ~~with]:~~

15 (1) has only family clients and transacts business
16 solely on behalf of family clients and their related interests ~~[an~~
17 ~~individual who is not related within the fourth degree of affinity~~
18 ~~or consanguinity to an individual who controls the state trust~~
19 ~~company]; ~~[or]~~~~

20 (2) ~~[a sole proprietorship, partnership, joint~~
21 ~~venture, association, trust, estate, business trust, or~~
22 ~~corporation that]~~ is ~~[not]~~ wholly owned, directly or indirectly,
23 legally or beneficially, by one or more family members; and

24 (3) does not hold itself out to the general public as a
25 corporate fiduciary for hire ~~[individuals related within the fourth~~
26 ~~degree of affinity or consanguinity to an individual who controls~~
27 ~~the state trust company].~~

1 (a-1) In this section:

2 (1) "Family client" includes:

3 (A) a family member;

4 (B) a former family member;

5 (C) a key employee of the trust company as
6 defined by and to the extent permitted by rules adopted under
7 Subsection (e), including a former key employee for a reasonable
8 transition period specified by rule;

9 (D) a nonprofit organization, charitable
10 foundation, charitable trust, including a charitable lead trust or
11 charitable remainder trust whose only current beneficiaries are
12 other family clients and charitable or nonprofit organizations, or
13 another charitable organization for which all the funding came
14 exclusively from one or more other family clients;

15 (E) the estate of a family member or former
16 family member;

17 (F) an irrevocable trust under which one or more
18 other family clients are the only current beneficiaries;

19 (G) an irrevocable trust funded exclusively by
20 one or more family clients in which other family clients and
21 nonprofit organizations, charitable foundations, charitable
22 trusts, or other charitable organizations are the only current
23 beneficiaries;

24 (H) a company wholly owned by, and operated for
25 the sole benefit of, one or more other family clients;

26 (I) a revocable trust of which one or more other
27 family clients are the sole grantors, including any such trust that

1 becomes irrevocable, wholly or partly, for a reasonable transition
2 period as specified by rule; and

3 (J) any other persons as may be permitted by
4 rules adopted under Subsection (e).

5 (2) "Family member," with respect to an individual,
6 means an individual related to the individual within the seventh
7 degree of consanguinity or affinity, as determined under Subchapter
8 B, Chapter 573, Government Code, except that a foster child is
9 considered the child of the foster parent and a person for whom a
10 guardian was appointed before the person's 18th birthday is
11 considered the child of the guardian.

12 (3) "Former family member" includes a former spouse or
13 stepchild who was a family member but is no longer a family member
14 due to a divorce or other similar event.

15 (d) A state trust company that is or has been exempt from a
16 provision of this subtitle under this section or a predecessor
17 statute may not transact business with the general public unless
18 the banking commissioner determines, as provided by Section
19 182.003, that public convenience and advantage will be promoted by
20 permitting the state trust company to engage in the trust business
21 with the general public.

22 (e) The finance commission may adopt rules:

23 (1) defining other circumstances under which a state
24 trust company may be exempted from a provision of this subtitle
25 because it does not transact business with the general public;

26 (2) specifying the provisions of this subtitle that
27 are subject to an exemption request; [~~and~~]

- 1 (3) establishing procedures and requirements for
2 obtaining, maintaining, or revoking an exemption; and
3 (4) defining or further defining terms used by this
4 section.

5 SECTION 6. Section 182.012, Finance Code, is amended by
6 amending Subsection (a) and adding Subsection (c) to read as
7 follows:

8 (a) A state trust company requesting an exemption under
9 Section 182.011 shall file an application with the banking
10 commissioner that includes:

11 (1) a nonrefundable application fee set by the finance
12 commission;

13 (2) a detailed sworn statement showing the state trust
14 company's assets and liabilities as of the end of the calendar month
15 preceding the filing of the application;

16 (3) a sworn statement of the reason for requesting the
17 exemption;

18 (4) a sworn statement that the state trust company:

19 (A) has or will have only family clients and
20 transacts or will transact business solely on behalf of family
21 clients and their related interests;

22 (B) is or will be wholly owned, directly or
23 indirectly, legally or beneficially, by one or more family members;

24 (C) does not or will not hold itself out to the
25 general public as a corporate fiduciary for hire; and

26 (D) [is not transacting business with the public
27 and that the company] will not transact business with the general

1 public without the prior written permission of the banking
2 commissioner;

3 (5) the current street mailing address and telephone
4 number of the physical location in this state at which the state
5 trust company will maintain its books and records, with a sworn
6 statement that the address given is true and correct and is not a
7 United States Postal Service post office box or a private mail box,
8 postal box, or mail drop; and

9 (6) a list of the specific provisions of this subtitle
10 for which the request for an exemption is made.

11 (c) In this section, "family client" and "family member"
12 have the meanings assigned by Section 182.011.

13 SECTION 7. Sections 182.013(a) and (c), Finance Code, are
14 amended to read as follows:

15 (a) An [~~Before June 30 of each year, an~~] exempt state trust
16 company shall file a certification annually with its statement of
17 condition and income, on a form provided by the banking
18 commissioner, that it is maintaining the conditions and limitations
19 of its exemption. The certification must be accompanied by a fee
20 set by the finance commission. [~~The certification is not valid~~
21 ~~unless it bears an acknowledgment stamped by the department.~~]

22 (c) The [~~banking commissioner may examine or investigate~~
23 ~~the~~] state trust company shall maintain records [~~periodically as~~]
24 necessary to verify the certification. The records are subject to
25 examination under Section 181.104.

26 SECTION 8. Section 182.015, Finance Code, is amended to
27 read as follows:

1 Sec. 182.015. CHANGE OF CONTROL OF EXEMPT STATE TRUST
2 COMPANY. [~~Control of an exempt state trust company may not be sold~~
3 ~~or transferred with exempt status.~~] If control of an exempt state
4 trust company is sold or otherwise transferred, the acquiring
5 person must comply with Sections 182.003, 182.004, 182.005, [~~and~~
6 183.001, and 183.002. For the exempt status of the state trust
7 company to continue, the acquiring person must file a certification
8 with the banking commissioner that the state trust company will
9 comply, or continue to comply, with the requirements of Section
10 182.011 after control is transferred. The banking commissioner may
11 examine or investigate the acquiring person and the state trust
12 company as necessary to verify the certification. If the
13 commissioner determines that the state trust company will not
14 comply, or continue to comply, with the requirements of Section
15 182.011 after control is transferred, the commissioner shall
16 terminate the exemption on the effective date of the transfer.
17 After the termination, the [~~automatically terminates on the~~
18 ~~effective date of the transfer. The~~] acquiring person must file a
19 separate application to obtain a new [~~an~~] exemption for the state
20 trust company under Section 182.011.

21 SECTION 9. Section 182.019, Finance Code, is amended to
22 read as follows:

23 Sec. 182.019. PRIOR EXEMPTION. (a) Subject to Subsection
24 (b), a [A] state trust company that was exempt before September 1,
25 1997, may no longer operate with that prior exempt status after the
26 earlier of:

27 (1) September 1, 2020; or

1 (2) the date control is sold or otherwise transferred
2 ~~[under a predecessor to this subtitle is considered exempt under~~
3 ~~this subtitle].~~

4 (b) A state trust company may apply for a new exemption
5 under Section 182.011 before loss of its exempt status under
6 Subsection (a).

7 SECTION 10. Section 184.101(b), Finance Code, is amended to
8 read as follows:

9 (b) Unless the banking commissioner in writing approves
10 maintenance of a lesser amount, a state trust company must invest
11 and maintain an amount equal to at least 50 [40] percent of the
12 state trust company's restricted capital under Section 182.008 in
13 investment securities that are readily marketable and can be
14 converted to cash within four business days.

15 SECTION 11. The following provisions of the Finance Code
16 are repealed:

17 (1) Sections 181.104(b) and (c); and

18 (2) Section 182.013(b).

19 SECTION 12. (a) Not later than September 1, 2020, a state
20 trust company that has restricted capital in an amount that is less
21 than the amount required by Section 182.008, Finance Code, as
22 amended by this Act, shall increase its restricted capital to at
23 least the amount required under that section, unless the state
24 trust company has an exemption under Section 182.011 or 182.019,
25 Finance Code, as amended by this Act. As permitted by Section
26 182.008(e), Finance Code, a state trust company may apply to the
27 banking commissioner of Texas for approval of restricted capital in

1 an amount that is less than the amount required under Section
2 182.008.

3 (b) A state trust company that has an exemption under
4 Section 182.019, Finance Code, on September 1, 2015, and has
5 restricted capital in an amount that is less than the amount
6 required by Section 182.008(a), Finance Code, as amended by this
7 Act, shall increase its restricted capital to at least \$250,000 on
8 or before September 1, 2020.

9 (c) The Finance Commission of Texas may adopt rules
10 specifying procedures for ratable increases in restricted capital
11 for state trust companies as required by this section and for
12 deferrals and extensions of time for a state trust company acting in
13 good faith to achieve minimum required restricted capital.

14 SECTION 13. Not later than September 1, 2016, a state trust
15 company shall comply with the investment liquidity requirements of
16 Section 184.101(b), Finance Code, as amended by this Act. On
17 written application, the banking commissioner of Texas may extend
18 the period for compliance for a state trust company for good cause
19 shown.

20 SECTION 14. This Act takes effect September 1, 2015.