

FINANCE CODE

TITLE 3. FINANCIAL INSTITUTIONS AND BUSINESSES

SUBTITLE F. TRUST COMPANIES

CHAPTER 181. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 181.001. SHORT TITLE. This subtitle may be cited as the Texas Trust Company Act.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 181.002. DEFINITIONS. (a) In this subtitle:

(1) "Account" means the client relationship established with a trust institution involving the transfer of funds or property to the trust institution, including a relationship in which the trust institution acts as trustee, executor, administrator, guardian, custodian, conservator, receiver, registrar, or agent.

(2) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with a state trust company or other company.

(3) Repealed by Acts 2001, 77th Leg., ch. 1420, Sec. 6.027, eff. Sept. 1, 2001.

(4) "Banking commissioner" means the banking commissioner of Texas or a person designated by the banking commissioner and acting under the banking commissioner's direction and authority.

(5) "Board" means the board of directors, managers, or managing participants of, or a person or group of persons acting in a comparable capacity for, a state trust company or other entity.

(6) Repealed by Acts 2001, 77th Leg., ch. 1420, Sec. 6.027, eff. Sept. 1, 2001.

(7) "Capital" means:

(A) the sum of:

(i) the par value of all shares or participation shares of a state trust company having a par value

that have been issued;

(ii) the consideration set by the board for all shares or participation shares of the state trust company without par value that have been issued, except the part of that consideration that:

(a) has been actually received;

(b) is less than all of that consideration; and

(c) the board, by resolution adopted not later than the 60th day after the date of issuance of those shares, has allocated to surplus with the prior approval of the banking commissioner; and

(iii) an amount not included in Subparagraphs (i) and (ii) that has been transferred to capital of the state trust company, on the payment of a share dividend or on adoption by the board of a resolution directing that all or part of surplus be transferred to capital, minus each reduction made as permitted by law; less

(B) all amounts otherwise included in Paragraphs (A)(i) and (ii) that are attributable to the issuance of securities by the state trust company and that the banking commissioner determines, after notice and an opportunity for hearing, should be classified as debt rather than equity securities.

(8) "Certified surplus" means the part of surplus designated by a vote of the board of a state trust company under Section [182.105](#) and recorded in the board minutes as certified.

(9) "Charter" means a charter issued under this subtitle to engage in a trust business.

(10) "Client" means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution, regardless of whether the trust institution owes a fiduciary duty to the person. The term includes a beneficiary of a trust for whom the trust institution acts as trustee and a person for whom the trust institution acts as agent, custodian, or bailee.

(11) "Company" means a corporation, a partnership, an association, a business trust, another trust, or a similar

organization, including a trust institution.

(12) "Conservator" means the banking commissioner or an agent of the banking commissioner exercising the powers and duties provided by Subchapter B, Chapter 185.

(13) "Control" means:

(A) the ownership of or ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, 25 percent or more of the outstanding shares of a class of voting securities of a state trust company or other company;

(B) the ability to control the election of a majority of the board of the state trust company or other company;

(C) the power to exercise, directly or indirectly, a controlling influence over the management or policies of the state trust company or other company as determined by the banking commissioner after notice and an opportunity for hearing; or

(D) the conditioning of the transfer of 25 percent or more of the outstanding shares or participation shares of a class of voting securities of the state trust company or other company on the transfer of 25 percent or more of the outstanding shares of a class of voting securities of another state trust company or other company.

(14) "Department" means the Texas Department of Banking.

(15) "Depository institution" means an entity with the power to accept deposits under applicable law.

(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.

(16) Repealed by Acts 2001, 77th Leg., ch. 1420, Sec. 6.027, eff. Sept. 1, 2001.

(17) "Equity security" means:

(A) stock or a similar security, any security convertible, with or without consideration, into such a security, a warrant or right to subscribe to or purchase such a security, or a security carrying such a warrant or right;

(B) a certificate of interest or participation in

a profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share or participation share, investment contract, voting-trust certificate, or partnership interest; and

(C) a certificate of interest or participation in, temporary or interim certificate for, or receipt for a security described by this subdivision that evidences an existing or contingent equity ownership interest.

(18) "Fiduciary record" means a matter written, transcribed, recorded, received, or otherwise in the possession of a trust institution that is necessary to preserve information concerning an act or event relevant to an account of a trust institution.

(19) "Finance commission" means the Finance Commission of Texas.

(20) Repealed by Acts 2001, 77th Leg., ch. 1420, Sec. 6.027, eff. Sept. 1, 2001.

(21) "Full liability participant" means a participant that agrees under the terms of a participation agreement to be liable under a judgment, decree, or order of court for the entire amount of all debts, obligations, or liabilities of a limited trust association.

(22) "Hazardous condition" means:

(A) a refusal by a trust company or an affiliate of a trust company to permit an examination of its books, papers, accounts, records, or affairs by the banking commissioner as provided by Section [181.104](#);

(B) a violation by a trust company of a condition of its chartering or an agreement entered into between the trust company and the banking commissioner or the department; or

(C) a circumstance or condition in which an unreasonable risk of loss is threatened to clients or creditors of a trust company, excluding risk of loss to a client that arises as a result of the client's decisions or actions, but including a circumstance or condition in which a trust company:

(i) 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 book or fair market value of its assets exceeds its liabilities;

(ii) has equity capital less than the amount of restricted capital the trust company is required to maintain under Section 182.008, or has equity capital the adequacy of which is threatened, as determined under regulatory accounting principles;

(iii) has concentrated an excessive or unreasonable portion of its assets in a particular type or character of investment;

(iv) violates or refuses to comply with this subtitle, another statute or regulation applicable to trust companies, or a final and enforceable order of the banking commissioner;

(v) is in a condition that renders the continuation of a particular business practice hazardous to its clients and creditors; or

(vi) conducts business in an unsafe or unsound manner, including conducting business with:

(a) inexperienced or inattentive management;

(b) weak or potentially dangerous operating practices;

(c) infrequent or inadequate audits;

(d) administration of assets that is notably deficient in relation to the volume and character of or responsibility for asset holdings;

(e) unsound administrative practices;

(f) frequent and uncorrected material occurrences of violations of law, including rules, or terms of the governing instruments; or

(g) a notable degree of conflicts of interest and engaging in self-dealing.

(23) "Home office" means a location registered with the banking commissioner as a state trust company's home office at which:

(A) the trust company does business;

(B) the trust company keeps its corporate books and records; and

(C) at least one executive officer of the trust company maintains an office.

(24) "Insider" means:

(A) each director, manager, managing participant, officer, and principal shareholder or participant of a state trust company;

(B) each affiliate of the state trust company and each director, officer, and employee of the affiliate;

(C) any person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the state trust company, whether or not the person has an official title or the officer is serving without salary or compensation; or

(D) each company controlled by a person described by Paragraph (A), (B), or (C).

(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;

(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 of its assets or merges or attempts to merge substantially all of its assets or business with another entity other than as provided by Chapter [182](#); or

(E) attempts to dissolve or liquidate other than as provided by Chapter [186](#).

(26) "Investment security" means a marketable

obligation evidencing indebtedness of a person in the form of a bond, note, debenture, or investment security.

(27) "Limited trust association" means a state trust company organized under this subtitle as a limited liability company, authorized to issue participation shares, and controlled by its participants.

(28) "Loans and extensions of credit" means direct or indirect advances of money by a state trust company to a person that are conditioned on the obligation of the person to repay the funds or that are repayable from specific property pledged by or on behalf of the person.

(29) "Manager" means a person elected to the board of a limited trust association.

(30) "Managing participant" means a participant in a limited trust association in which management has been retained by the participants.

(31) "Mutual funds" means equity securities of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.) and the Securities Act of 1933 (15 U.S.C. Section 77a et seq.). The term does not include money market funds.

(32) "Officer" means the presiding officer of the board, the principal executive officer, or another officer appointed by the board of a state trust company or other company, or a person or group of persons acting in a comparable capacity for the state trust company or other company.

(33) "Operating subsidiary" means a company for which a state trust company has the ownership, ability, or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than 50 percent of the outstanding shares of each class of voting securities or its equivalent of the company.

(34) "Participant" means an owner of a participation share in a limited trust association.

(35) "Participant-transferee" means a transferee of a participation share who has not received the unanimous consent of all participants to be a participant, or who becomes a participant-transferee under Subchapter C, Chapter 183.

(36) "Participation agreement" means the instrument stating the agreement among the participants of a limited trust association relating to the rights and duties of the participants and participant-transferees, including allocations of income, loss, deduction, credit, distributions, liquidation rights, redemption rights, liabilities of participants, priority rights of participant-transferees to transfer participation shares, rights of participants to purchase participation shares of participant-transferees, the procedures for elections and voting by participants, and any other matter not prohibited by or inconsistent with this subtitle.

(37) "Participation shares" means the units into which the proprietary interests of a limited trust association are divided or subdivided by means of classes, series, relative rights, or preferences.

(38) "Principal shareholder" means a person who owns or has the ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, 10 percent or more of the outstanding shares or participation shares of any class of voting securities of a state trust company or other company.

(39) "Restricted capital" means the sum of capital and certified surplus.

(40) "Regulatory accounting principles" means generally accepted accounting principles as modified by rules adopted under:

(A) this subtitle; or

(B) an applicable federal statute or regulation.

(41) "Secondary capital" means the amount by which the assets of a state trust company exceed restricted capital, required by Section [182.008](#), and liabilities.

(42) "Shareholder" means an owner of a share in a state trust company.

(43) "Shares" means the units into which the proprietary interests of a state trust company are divided or subdivided by means of classes, series, relative rights, or preferences.

(44) "State bank" means a banking association or

limited banking association organized or reorganized under Subtitle A, including an association organized under the laws of this state before September 1, 1997, with the express power to receive and accept deposits and possessing other rights and powers granted by that subtitle expressly or by implication. The term does not include a savings association, savings bank, or credit union.

(45) "State trust company" or "trust company" means a trust association or limited trust association organized or reorganized under this subtitle, including an association organized under the laws of this state before September 1, 1997. If the context or circumstances require, the term includes a trust company organized under the laws of another state that lawfully maintains a trust office in this state in accordance with Chapter 187.

(46) "Subsidiary" means a state trust company or other company that is controlled by another person. The term includes a subsidiary of a subsidiary.

(47) "Supervisor" means the banking commissioner or an agent of the banking commissioner exercising the powers and duties specified in Subchapter B, Chapter 185.

(47-a) "Surplus" means the amount by which the assets of a state trust company exceed the company's liabilities, capital, and undivided profits.

(47-b) "Third-party service provider" means a person who performs activities relating to the trust business on behalf of a trust institution for the trust institution's customers or on behalf of another person directly engaged in providing financial services for the person's customers. The term:

(A) includes a person who:

(i) provides data processing services;

(ii) performs activities in support of the provision of financial services, including lending, transferring funds, fiduciary activities, trading activities, and deposit taking activities;

(iii) for the purpose of furnishing to third parties reports indicating a person's creditworthiness, credit standing, or credit capacity, regularly engages in the

practice of assembling or evaluating, and maintaining, public record information and credit account information from persons who furnish that information regularly and in the ordinary course of business; or

(iv) provides Internet-related services, including web services, processing electronic bill payments, developing and maintaining mobile applications, system and software development and maintenance, and security monitoring; and

(B) does not include a provider of an interactive computer service or a general audience Internet or communications platform, except to the extent that the service or platform is specially designed or adapted for the trust business and activities relating to the trust business.

(48) "Trust association" means a trust company organized under this subtitle as a corporation, authorized to issue shares of stock, and controlled by its shareholders.

(49) "Trust business" means the business of a company holding itself out to the public as a fiduciary for hire or compensation to hold or administer accounts. The term includes:

(A) the business of a trustee or custodian of an individual retirement account described by Section 408(a), Internal Revenue Code of 1986; and

(B) the business of an administrator or servicer of individual retirement accounts described by Section 408(a), Internal Revenue Code of 1986, who makes the administrator's or servicer's services available to the public for hire or compensation.

(50) "Trust deposits" means client funds held by a trust institution and authorized to be deposited with itself as a permanent investment or pending investment, distribution, or payment of debts on behalf of the client.

(51) "Trust institution" means a bank, credit union, foreign bank, savings association, savings bank, or trust company that is authorized by its charter to conduct a trust business.

(52) "Unauthorized trust activity" means an act or practice within this state by a company without a charter, license, permit, registration, or other authority issued or granted by the

banking commissioner or other appropriate regulatory authority for which such a charter, license, permit, registration, or other authority is required to conduct trust business.

(53) "Undivided profits" means the part of equity capital of a state trust company equal to the balance of its net profits, income, gains, and losses since the date of its formation minus subsequent distributions to shareholders or participants and transfers to surplus or capital under share dividends or appropriate board resolutions. The term includes amounts allocated to undivided profits as a result of a merger.

(54) "Voting security" means a share, participation share, or other evidence of proprietary interest in a state trust company or other company that has as an attribute the right to vote or participate in the election of the board of the trust company or other company, regardless of whether the right is limited to the election of fewer than all of the board members. The term includes a security that is convertible or exchangeable into a voting security and a nonvoting participation share of a managing participant.

(b) The definitions provided by this section shall be liberally construed to accomplish the purposes of this subtitle.

(c) The finance commission by rule may adopt other definitions to accomplish the purposes of this subtitle.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 17, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 6.002(a), 6.027, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. [1962](#)), Sec. 65, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. [1664](#)), Sec. 11, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. [875](#)), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. [1401](#)), Sec. 9, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. [1823](#)), Sec. 7, eff.

September 1, 2019.

Sec. 181.003. TRUST COMPANY RULES. (a) The finance commission may adopt rules to accomplish the purposes of this subtitle, including rules necessary or reasonable to:

- (1) implement and clarify this subtitle;
- (2) preserve or protect the safety and soundness of state trust companies;
- (3) grant the same rights and privileges to state trust companies with respect to the exercise of fiduciary powers and the conducting of financial activities or activities incidental or complementary to financial activities that are or may be granted to a trust institution that maintains its principal office or a branch or trust office in this state;
- (4) provide for recovery of the cost of maintenance and operation of the department and the cost of enforcing this subtitle through the imposition and collection of ratable and equitable fees for notices, applications, and examinations; and
- (5) facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission.

(b) 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 conferred by this section.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 18, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 6.003(a), eff. Sept. 1, 2001.

Sec. 181.004. IMPLYING THAT PERSON IS TRUST COMPANY. (a) A person or company may not use in a business name or advertising the words "trust," "trust company," or any similar term or phrase, any word pronounced "trust" or "trust company," any foreign word that means "trust" or "trust company," or any term that tends to imply that the business is holding out to the public that it engages in the business of a fiduciary for hire unless the banking commissioner has approved the use in writing after finding that the use will not be misleading. This subsection does not prohibit an

individual from engaging in the business of a fiduciary for compensation or from using the words "trust" or "trustee" for the purpose of identifying assets held or actions taken in an existing capacity.

(b) Subsection (a) does not apply to:

(1) a trust institution authorized under this subtitle to conduct a trust business in this state; or

(2) another entity organized under the laws of this state, another state, the United States, or a foreign sovereign state to the extent that:

(A) the entity is authorized under its charter or the laws of this state or the United States to use a term, word, character, ideogram, phonogram, or phrase prohibited by Subsection (a); and

(B) the entity is authorized by the laws of this state or the United States to conduct the activities in which the entity is engaged in this state.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.004(a), eff. Sept. 1, 2001.

Sec. 181.005. LIABILITY OF TRUST COMPANY DIRECTORS AND PERSONNEL. (a) The provisions of the Business Organizations Code regarding liability, defenses, and indemnification of a director, officer, agent, or employee apply to a director, officer, agent, or employee of a state trust company in this state. Except as limited by those provisions, a disinterested director, manager, managing participant, officer, or employee of a state trust company may not be held personally liable in an action seeking monetary damages arising from the conduct of the state trust company's affairs unless the damages resulted from the gross negligence or wilful or intentional misconduct of the person during the person's term of office or service with the state trust company.

(b) A director, manager, managing participant, officer, or employee of a state trust company is disinterested with respect to a decision or transaction if:

(1) the person fully discloses any interest in the

decision or transaction and does not participate in the decision or transaction; or

(2) the decision or transaction does not involve any of the following:

(A) personal profit for the person through dealing with the state trust company or usurping an opportunity of the trust company;

(B) buying or selling assets of the state trust company in a transaction in which the person has a direct or indirect pecuniary interest;

(C) dealing with another state trust company or other person in which the person is a director, manager, managing participant, officer, or employee or otherwise has a significant direct or indirect financial interest; or

(D) dealing with a family member of the person.

(c) A director, manager, managing participant, or officer who, in performing the person's duties and functions, acts in good faith and reasonably believes that reliance is warranted is entitled to rely on information, including an opinion, report, financial statement or other type of statement or financial data, decision, judgment, or performance, that is prepared, presented, made, or rendered by:

(1) one or more directors, managers, managing participants, officers, or employees of the state trust company, or of an entity under joint or common control with the state trust company, whom the director, manager, managing participant, or officer reasonably believes merits confidence;

(2) legal counsel, a public accountant, or another person whom the director, manager, managing participant, or officer reasonably believes merits confidence; or

(3) a committee of the board of the state trust company of which the director, manager, or managing participant is not a member.

(d) In this section, "family member" means a person's:

(1) spouse;

(2) minor child; or

(3) adult child who resides in the person's home.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. [1962](#)), Sec. 66, eff. September 1, 2007.

Sec. 181.006. EXEMPTION OF TRUST INSTITUTION DIRECTORS AND PERSONNEL FROM SECURITIES LAW. An officer, director, manager, managing participant, or employee of a trust institution with fewer than 500 shareholders or participants, including a state trust company or a trust institution organized under the laws of another state that lawfully maintains an office in this state, or a holding company with fewer than 500 shareholders or participants that controls a trust institution is exempt from the registration and licensing provisions of The Securities Act (Title 12, Government Code) with respect to that person's participation in a transaction, including a sale, involving securities issued by the trust institution or the holding company of which that person is an officer, director, manager, managing participant, or employee if the person is not compensated for the person's participation in the transaction.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.005(a), eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 2.15, eff. January 1, 2022.

Sec. 181.007. ATTACHMENT, INJUNCTION, OR EXECUTION. An attachment, injunction, or execution to collect a money judgment or secure a prospective money judgment against a trust institution, including a state trust company or a trust institution organized under the laws of another state that lawfully maintains an office in this state, or against a client of or client account in the trust institution, is governed by Sections [59.007](#) and [59.008](#).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.006(a),

eff. Sept. 1, 2001.

SUBCHAPTER B. REGULATION OF TRUST COMPANIES BY BANKING DEPARTMENT

Sec. 181.101. ISSUANCE OF INTERPRETIVE STATEMENTS. (a)

The banking commissioner:

(1) may issue interpretive statements containing matters of general policy for the guidance of the public and state trust companies; and

(2) may amend or repeal a published interpretive statement by issuing an amended statement or notice of repeal of a statement.

(b) An interpretive statement may be disseminated by newsletter, via an electronic medium such as the Internet, in a volume of statutes or related materials published by the banking commissioner or others, or by other means reasonably calculated to notify persons affected by the interpretive statement. Notice of an amended or withdrawn statement must be published in a substantially similar manner as the affected statement was originally published.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.007(a), eff. Sept. 1, 2001.

Sec. 181.102. ISSUANCE OF OPINION. (a) In response to a specific request from a member of the public or industry, the banking commissioner may issue an opinion directly or through a deputy banking commissioner or department attorney.

(b) If the banking commissioner determines that the opinion is useful for the general guidance of trust companies and the public, the banking commissioner may disseminate the opinion by newsletter, via an electronic medium such as the Internet, in a volume of statutes or related materials published by the banking commissioner or others, or by other means reasonably calculated to notify persons affected by the opinion. A published opinion must be redacted to preserve the confidentiality of the requesting party unless the requesting party consents to be identified in the

published opinion.

(c) The banking commissioner may amend or repeal a published opinion by issuing an amended opinion or notice of repeal of an opinion and disseminating the opinion or notice in a substantially similar manner as the affected statement or opinion was originally published. The requesting party, however, may rely on the original opinion if:

(1) all material facts were originally disclosed to the banking commissioner;

(2) the safety and soundness of the affected trust companies will not be affected by further reliance on the original opinion; and

(3) the text and interpretation of relevant governing provisions of this subtitle have not been changed by legislative or judicial action.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.01, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 6.007(a), eff. Sept. 1, 2001.

Sec. 181.103. EFFECT OF INTERPRETIVE STATEMENT OR OPINION. An interpretive statement or opinion issued under this subchapter does not have the force of law and is not a rule for the purposes of Chapter 2001, Government Code, unless adopted as a rule by the finance commission as provided by Chapter 2001, Government Code. An interpretive statement or opinion is an administrative construction of this subtitle entitled to great weight if the construction is reasonable and does not conflict with this subtitle.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 181.104. EXAMINATION REQUIREMENT. (a) The banking commissioner shall examine each state trust company annually, or on another periodic basis as may be required by rule or policy, or as the commissioner considers necessary to:

(1) safeguard the interests of clients, creditors,

shareholders, participants, or participant-transferees; and

(2) efficiently enforce applicable law.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 250 , Sec. 11(1), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 250 , Sec. 11(1), eff. September 1, 2015.

(d) Disclosure of information to the banking commissioner pursuant to an examination request or a subpoena issued under this section does not constitute a waiver of or otherwise affect or diminish an evidentiary privilege to which the information is otherwise subject. A report of an examination under this section is confidential and may be disclosed only under the circumstances provided by this subtitle.

(e) The banking commissioner may:

(1) accept an examination of a state trust company, a third-party contractor, or an affiliate of the state trust company by a federal or other governmental agency in lieu of an examination under this section; or

(2) conduct an examination of a state trust company, a third-party contractor, or an affiliate of the state trust company jointly with a federal or other governmental agency.

(f) The banking commissioner may:

(1) administer oaths and examine persons under oath on any subject that the banking commissioner considers pertinent to the financial condition or the safety and soundness of the activities of a state trust company; and

(2) subpoena witnesses and require and compel by subpoena the production of documents not voluntarily produced.

(f-1) If a person refuses to obey a subpoena, a district court of Travis County, on application by the commissioner, may issue an order requiring the person to appear before the commissioner and produce documents or give evidence regarding the matter under examination or investigation.

(g) A subpoena issued to a financial institution under this section is not subject to Section [59.006](#).

(h) Except to the extent disclosure is necessary to locate and produce responsive records or obtain legal representation and

subject to Subsection (i), a subpoena issued under this section may provide that the person to whom the subpoena is directed or any person who comes into receipt of the subpoena may not:

- (1) disclose that the subpoena has been issued;
- (2) disclose or describe any records requested in the subpoena;
- (3) disclose whether records have been furnished in response to the subpoena; or
- (4) if the subpoena requires a person to be examined under oath, disclose or describe the examination, including the questions asked, the testimony given, or the transcript produced.

(i) A subpoena issued under this section may prohibit the disclosure of information described by Subsection (h) only if the banking commissioner finds, and the subpoena states, that:

- (1) the subpoena, the examination, or the records relate to an ongoing investigation; and
- (2) the disclosure could significantly impede or jeopardize the investigation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.02, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 12, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. 875), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. 875), Sec. 11(1), eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. 1823), Sec. 8, eff. September 1, 2019.

Sec. 181.105. COST OF REGULATION. Each state trust company shall pay, through the imposition and collection of fees established by the finance commission under Section 181.003(a)(4):

- (1) the cost of examination;
- (2) the equitable or proportionate cost of maintenance and operation of the department; and

(3) the cost of enforcement of this subtitle.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 181.106. REGULATION AND EXAMINATION OF RELATED ENTITIES. (a) The banking commissioner may regulate and examine, to the same extent as if the services or activities were performed by a state trust company on its own premises:

(1) the activities of a state trust company affiliate; and

(2) the services or activities of a third-party service provider that a state trust company or state trust company affiliate has contracted for or otherwise arranged to be performed on behalf of the state trust company or state trust company affiliate.

(b) The banking commissioner may collect a fee from an examined third-party service provider or affiliate in connection with each examination to cover the cost of the examination or may collect that fee from the state trust companies that use the examined third-party service provider.

(c) To promote regulatory efficiency, if, in the preceding 24 months, a third-party service provider or affiliate has been examined by a federal or state financial services regulatory agency or by a member agency of the Federal Financial Institutions Examination Council, or its successor agency, the banking commissioner may accept the results of that examination instead of conducting the banking commissioner's own examination of the third-party service provider or affiliate. Nothing in this subsection shall be construed as limiting or restricting the banking commissioner from participating in an examination of a third-party service provider or affiliate conducted by a federal or state financial services regulatory agency or by a member agency of the Federal Financial Institutions Examination Council, or its successor agency.

(d) A third-party service provider that refuses to submit to examination or to pay an assessed fee for examination under this section is subject to an enforcement action under Chapter

185. With respect to a third-party service provider's refusal to submit to examination, the banking commissioner may notify all state trust companies of the refusal and warn that continued use of the third-party service provider may constitute an unsafe and unsound fiduciary practice.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 10, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. 1823), Sec. 9, eff. September 1, 2019.

Sec. 181.107. STATEMENTS OF CONDITION AND INCOME; PENALTY.

(a) Each state trust company periodically shall file with the banking commissioner a copy of its statement of condition and income.

(b) The finance commission by rule may:

(1) require the statement to be filed with the banking commission at the intervals the finance commission determines;

(2) specify the form of the statement of condition and income, including specified confidential and public information to be in the statement; and

(3) require public information in the statement to be published at the times and in the publications and locations the finance commission determines.

(c) A statement of condition and income is a public record except for:

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

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

(d) A state trust company that fails to file a statement of condition and income on or before the date it is due is, after notice and hearing, subject to a penalty of not more than \$500 a day for each day of noncompliance.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. 875), Sec. 3, eff. September 1, 2015.

Sec. 181.108. LIABILITY OF COMMISSION AND DEPARTMENT OFFICERS AND PERSONNEL LIMITED. (a) The banking commissioner, a member of the finance commission, a deputy banking commissioner, an examiner, assistant examiner, supervisor, conservator, agent, or other officer or employee of the department, or an agent of the banking commissioner is not personally liable for damages arising from the person's official act or omission unless the act or omission is corrupt or malicious.

(b) The attorney general shall defend an action brought against a person because of an official act or omission under Subsection (a), regardless of whether the defendant has terminated service with the department before the action commences.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.03, eff. Sept. 1, 2001.

#### SUBCHAPTER C. ADMINISTRATIVE PROCEDURE

Sec. 181.201. BANKING COMMISSIONER HEARING; INFORMAL DISPOSITION. (a) The banking commissioner may convene a hearing to receive evidence and argument regarding any matter within the jurisdiction of and before the banking commissioner for decision or review. The hearing must be conducted under Chapter 2001, Government Code. A matter made confidential by law must be considered by the banking commissioner in a closed hearing.

(b) A hearing before the banking commissioner that is required or authorized by law may be conducted by a hearings officer on behalf of the banking commissioner.

(c) This section does not grant a right to hearing to a person that is not otherwise granted by governing law.

(d) The banking commissioner may informally dispose of a

matter within the jurisdiction of and before the banking commissioner by consent order, agreed settlement, or default.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.04, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. [3555](#)), Sec. 7, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. [3555](#)), Sec. 8, eff. September 1, 2015.

Sec. 181.202. APPEAL OF BANKING COMMISSIONER DECISION OR ORDER. Except as expressly provided otherwise by this subtitle, a person affected by a decision or order of the banking commissioner made under this subtitle after a hearing may appeal the decision or order to a district court in Travis County as provided by Section [181.204](#).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. [614](#)), Sec. 22, eff. September 1, 2019.

Sec. 181.204. APPEAL TO DISTRICT COURT. A person affected by a final order of the banking commissioner may appeal the final order by filing a petition for judicial review as provided by Chapter [2001](#), Government Code. A petition for judicial review filed in the district court does not stay or vacate the appealed order unless the court, after notice and hearing, expressly stays or vacates the order.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. [614](#)), Sec. 22, eff. September 1, 2019.

#### SUBCHAPTER D. CONFIDENTIALITY OF INFORMATION

Sec. 181.301. DISCLOSURE BY DEPARTMENT PROHIBITED.

(a) Except as expressly provided otherwise by this subtitle or a rule adopted under this subtitle, the following are confidential and may not be disclosed by the banking commissioner or an employee of the department:

(1) information directly or indirectly obtained by the department in any manner, including through an application or examination, concerning the financial condition or business affairs of a state trust company, a present, former, or prospective shareholder, participant, officer, director, manager, or affiliate of the state trust company, or a third-party service provider of the state trust company or its affiliate, other than the public portions of a report of condition or income statement; and

(2) each related file or record of the department.

(b) Information obtained by the department from a federal or state regulatory agency that is confidential under federal or state law may not be disclosed except as provided by federal or state law.

(c) The banking commissioner or an officer or employee of the department commits an offense if the person:

(1) discloses information or permits access to a file or record of the department; and

(2) knows at the time of disclosure or permission that the disclosure or permission violates this subchapter.

(d) An offense under this section is a Class A misdemeanor. Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.05, eff. Sept. 1, 2001.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 11, eff. September 1, 2017.

Sec. 181.3015. DISCLOSURE TO STATE TRUST COMPANIES. The banking commissioner may disclose to a state trust company information about an affiliate or third-party service provider of the state trust company.

Added by Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 12,

eff. September 1, 2017.

Sec. 181.302. DISCLOSURE TO FINANCE COMMISSION. Confidential information may not be disclosed to a member of the finance commission. A member of the finance commission may not be given access to the files and records of the department except that the banking commissioner may disclose to the finance commission information, files, and records pertinent to a hearing or matter pending before the finance commission.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 181.303. DISCLOSURE TO OTHER AGENCIES. (a) For purposes of this section, "affiliated group," "agency," "functional regulatory agency," and "privilege" have the meanings assigned by Section [31.303](#).

(b) The banking commissioner may, as the banking commissioner considers necessary or proper to the enforcement of the laws of this state, another state, the United States, or a foreign sovereign state with whom the United States currently maintains diplomatic relations, or in the best interest of the public, disclose information in the possession of the department to another agency. The banking commissioner may not disclose information under this section that is confidential under applicable state or federal law unless:

(1) the recipient agency agrees to maintain the confidentiality and take all reasonable steps to oppose an effort to secure disclosure of the information from the agency; or

(2) the banking commissioner determines in the exercise of discretion that the interest of law enforcement outweighs and justifies the potential for disclosure of the information by the recipient agency.

(c) The banking commissioner by agreement may establish an information sharing and exchange program with a functional regulatory agency that has overlapping regulatory jurisdiction with the department, with respect to all or part of an affiliated group, including a financial institution, to reduce the potential

for duplicative and burdensome filings, examinations, and other regulatory activities. Each agency party to the agreement must agree to maintain confidentiality of information that is confidential under applicable state or federal law and take all reasonable steps to oppose any effort to secure disclosure of the information from the agency. An agreement may also specify procedures regarding use and handling of confidential information and identify types of information to be shared and procedures for sharing on a recurring basis.

(d) Disclosure of information by or to the banking commissioner under this section does not constitute a waiver of or otherwise affect or diminish an evidentiary privilege to which the information is otherwise subject, whether or not the disclosure is governed by a confidentiality agreement.

(e) Notwithstanding other law, an agency of this state:

(1) may execute, honor, and comply with an agreement to maintain confidentiality and oppose disclosure of information obtained from the banking commissioner as provided in this section; and

(2) shall treat as confidential any information obtained from the banking commissioner that is entitled to confidential treatment under applicable state or federal law and take all reasonable steps to oppose an effort to secure disclosure of the information from the agency.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 19, eff. Sept. 1, 2001.

Sec. 181.304. OTHER DISCLOSURE PROHIBITED; PENALTY. (a) Confidential information that is provided to a state trust company, affiliate, or service provider of the state trust company, whether in the form of a report of examination or otherwise, is the confidential property of the department. The information may not be made public or disclosed by the recipient or by an officer, director, manager, employee, or agent of the recipient to a person not officially connected to the recipient as officer, director, employee, attorney, auditor, independent auditor, or bonding

company, except as authorized by rules adopted under this subtitle.

(b) A person commits an offense if the person discloses or uses the confidential information in violation of this section. An offense under this subsection is punishable as if it were an offense under Section 37.10, Penal Code.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 181.305. CIVIL DISCOVERY. Civil discovery of confidential information from a person subject to Section 181.304 under subpoena or other legal process in a civil proceeding must comply with rules adopted under this subtitle and other applicable law. The rules may:

(1) restrict release of confidential information to the portion directly relevant to the legal dispute at issue; and

(2) require that a protective order, in the form and under circumstances specified by the rules, be issued by a court before release of the confidential information.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.06, eff. Sept. 1, 2001.

Sec. 181.306. INVESTIGATIVE INFORMATION. Notwithstanding any other law, the banking commissioner may refuse to release information or records concerning a state trust company in the custody of the department if, in the opinion of the banking commissioner, release of the information or records might jeopardize an ongoing investigation of potentially unlawful activity.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 181.307. EMPLOYMENT INFORMATION. (a) A person may provide employment information concerning the known or suspected involvement of a present or former employee, officer, or director of a state trust company in a violation of any state or federal law, rule, or regulation that has been reported to appropriate state or

federal authorities to:

(1) a state trust company; or

(2) a person providing employment information to a state trust company.

(b) A person may not be held liable for providing information under Subsection (a) unless the information provided is false and the person provided the information with disregard for the truth.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 181.308. SHAREHOLDER INSPECTION RIGHTS. (a) Notwithstanding Section 21.218 or 101.502, Business Organizations Code, a shareholder or participant of a state trust company may not examine:

(1) a report of examination or other confidential property of the department that is in the possession of the state trust company; or

(2) a book or record of the state trust company that directly or indirectly pertains to financial or other information maintained by the state trust company on behalf of its clients, including a specific item in the minutes of the board or a committee of the board regarding client account review and approval or any report that would tend to identify the state trust company's client.

(b) This section does not affect the rights of a shareholder or participant of a state trust company acting in another capacity.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 67, eff. September 1, 2007.