this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

Passed by the House on May 2, 2013: Yeas 147, Nays 0, 2 present, not voting; passed by the Senate on May 22, 2013: Yeas 31, Nays 0. Approved June 14, 2013. Effective June 14, 2013.

CHAPTER 940

H.B. No. 1664

AN ACT

relating to the regulation of banks, trust companies, and bank holding companies.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 11.107(c), Finance Code, is amended to read as follows:

(c) The presiding officer may:

(1) adopt rules and procedures as the presiding officer considers necessary for the orderly operation of the finance commission and for communication among the finance commission, the Texas Department of Banking [department], the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner;

(2) adopt internal procedures governing the time and place of meetings, the type of notice for special public meetings, the manner in which public meetings are to be conducted, and other similar matters; and

(3) appoint committees composed of finance commission members as the presiding officer considers necessary to carry out the commission’s business.

SECTION 2. Section 31.002(a)(8), Finance Code, is amended to read as follows:

(8) “Branch” means a location of a bank, other than the bank’s home office, at which the bank engages the public in the business of banking. The term does not include:

(A) a drive-in facility located not more than 2,000 feet from the nearest wall of the home office or an approved branch office of the bank;

(B) a night depository;

(C) an electronic terminal;

(D) a deposit or loan production office as described by Section 32.204;

(E) a state or federally licensed armored car service or other courier service transporting items for deposit or payment, unless:

(i) the risk of loss of items in the custody of the service is borne by the employing bank; or

(ii) the items in the custody of the service are considered to be in customer accounts at the employing bank or federally insured through the employing bank;

(F) a location at which the bank offers exclusively nondepository financial products or services to the public, including financial, investment, or economic advisory services;

(G) a location that combines permissible non-branch functions or facilities; or

(H) another office or facility as provided by this subtitle or a rule adopted under this subtitle.

SECTION 3. Section 31.105, Finance Code, is amended by amending Subsections (c) and (d) and adding Subsections (c-1) and (e) to read as follows:

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

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

(c-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.

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

SECTION 4. Section 32.204, Finance Code, is amended to read as follows:

Sec. 32.204. DEPOSIT OR LOAN PRODUCTION OFFICES. (a) A state bank may establish one or more deposit or loan production offices for the purpose of:

(1) soliciting deposit accounts, applications for loans, or equivalent transactions;

(2) accepting loan applications, and performing ministerial duties related to solicitations described by Subdivision (1); and

(3) conducting other activities as permitted by rules adopted under this subtitle [consummating a granted loan, such as execution of loan documents and dispensation of loan proceeds by check or other draft, including a certified or cashier's check, but not by cash. A credit decision, commitment to make a loan, and preparation of a check or other draft to dispense loan proceeds must occur at the bank's home office or a branch office and may not occur at a loan production office].

(b) The bank shall notify the banking commissioner in writing of the location of and activities to be conducted at a proposed deposit or loan production office of the bank. The bank may establish the proposed office beginning on the 31st day after the date [before the 31st day before the date of establishment of a loan production office, except that] the banking commissioner receives the bank's notice unless [may waive or shorten the period if] the banking commissioner specifies that the proposed office be established on an earlier or later date.

(c) The banking commissioner may extend the 30-day period prescribed by Subsection (b) on a determination that the bank's notice raises issues that require additional information or time for analysis. If the period is extended [does not have a significant supervisory or regulatory concern regarding] the bank may establish the proposed deposit or loan production office only with the prior written approval of the banking commissioner.

SECTION 5. Section 33.104, Finance Code, is amended to read as follows:

Sec. 33.104. ADVISORY DIRECTOR. (a) An advisory director is not considered a director if the advisory director:

(1) is not elected by the shareholders of the bank;

(2) does not vote on matters before the board or a committee of the board;

(3) is not counted for purposes of determining a quorum of the board or committee; and

(4) provides solely general policy advice to the board.

(b) A state bank may not disclose to an advisory director confidential information pertaining to the bank or the bank's customers unless:

(1) the board adopts a resolution that designates the advisory director as a person who is officially connected to the bank and that describes the purpose for disclosure of the information, which must be a reasonable business purpose; and
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(2) the disclosure is made under a written confidentiality agreement between the bank and the advisory director.

SECTION 6. Section 33.105, Finance Code, is amended to read as follows:

Sec. 33.105. REQUIRED MONTHLY BOARD MEETING. (a) Except as provided by Subsection (b), the [The] board of a state bank shall hold at least one regular meeting each month.

(b) On application by the board, the banking commissioner may grant the board approval to hold regular meetings on a less frequent basis than the period prescribed by Subsection (a). The commissioner may revoke or modify a prior approval granted under this subsection if the commissioner determines that more frequent regular meetings of the board are necessary to promote the safety and soundness of the bank.

(c) At each regular meeting the board shall review and approve the minutes of the prior meeting and review the operations, activities, and financial condition of the bank. The board may designate a committee from among its members to perform those duties and approve or disapprove the committee's report at each regular meeting. Each action of the board must be recorded in its minutes.

SECTION 7. Section 34.003(c), Finance Code, is amended to read as follows:

(c) A state bank shall dispose of real property subject to this section not later than:

(1) the fifth anniversary of the date the real property:

(A) was acquired except as otherwise provided by rules adopted under this subtitle; or

(B) it ceases to be used as a bank facility; or

(2) the second anniversary of the date it ceases to be a bank facility as provided by Section 34.002(b).

SECTION 8. Section 34.004, Finance Code, is amended to read as follows:

Sec. 34.004. RETENTION OF NONPARTICIPIATING ROYALTY [PASSIVE INVESTMENT IN MINERAL] INTERESTS. (a) Notwithstanding Section 34.003(a), a state bank may hold nonparticipating royalty interests if:

(1) the state bank acquires the interest pursuant to Section 34.003(a)(3) or retains the interest in a sale of property acquired under that section;

(2) the interest is nonparticipating due to the fact the interest:

(A) is nonpossessory;

(B) does not bear executive rights, the right of ingress and egress, the right to receive bonus payments, or the right to receive delay rentals; and

(C) is accordingly not subject to expenses of exploration, development, production, operation, maintenance, or abandonment, or [any] other expenses associated with extracting and marketing the minerals subject to the [rights or] interest;

(3) the interest is reasonably valued on the books of the state bank for not more than a nominal amount, and the aggregate amount of earnings from such interests is separately disclosed in the annual financial statements of the state bank;

(4) the state bank does not make any new investments relating to the [rights or] interests without the approval of the banking commissioner; and

(5) the banking commissioner determines that the possession of such [rights and] interests is not inconsistent with the safety and soundness of the state bank.

(b) The banking commissioner may order a state bank that holds nonparticipating royalty interests to divest such interests at any time if the banking commissioner determines that continued ownership of such interests is detrimental to the state bank.

(c) Subject to compliance with this section, nonparticipating royalty interests are not considered to be real property for purposes of this subtitle.

SECTION 9. Section 35.003(b), Finance Code, is amended to read as follows:

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(b) If the banking commissioner has grounds for action under Subsection (a) and finds that a removal or prohibition order appears to be necessary and in the best interest of the public [bank involved and its depositors, creditors, or shareholders], the banking commissioner may serve a proposed removal or prohibition order, as appropriate, on a person alleged to have committed or participated in the action. The proposed order must:

(1) be delivered by personal delivery or by registered or certified mail, return receipt requested;
(2) state with reasonable certainty the grounds for removal or prohibition;
(3) state the effective date of the order, which may not be before the 21st day after the date the proposed order is delivered or mailed; and
(4) state the duration of the order, including whether the duration of the order is perpetual.

SECTION 10. Section 35.106, Finance Code, is amended to read as follows:
Sec. 35.106. AUTHORITY OF SUPERVISOR. During a period of supervision, a bank, without the prior approval of the banking commissioner or the supervisor or as otherwise permitted or restricted by the order of supervision, may not:

(1) dispose of, sell, transfer, convey, or encumber the bank's assets;
(2) lend or invest the bank's money;
(3) incur a debt, obligation, or liability; [or]
(4) pay a cash dividend to the bank's shareholders; or
(5) remove an executive officer or director, change the number of executive officers or directors, or have any other change in the position of executive officer or director.

SECTION 11. Section 181.002(a), Finance Code, is amended by adding Subdivision (47-a) to read as follows:

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

SECTION 12. Section 181.104, Finance Code, is amended by amending Subsections (d) and (f) and adding Subsections (f-1) and (g) to read as follows:

(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.

(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.

SECTION 13. Section 183.104, Finance Code, is amended to read as follows:
Sec. 183.104. ADVISORY DIRECTOR OR ADVISORY MANAGER. (a) An advisory director or advisory manager is not considered to be a director if the advisory director or advisory manager:

(1) is not elected by the shareholders or participants of the state trust company;
(2) does not vote on matters before the board or a committee of the board;
(3) is not counted for purposes of determining a quorum of the board or committee; and
(4) provides solely general policy advice to the board.

(b) A state trust company may not disclose to an advisory director or advisory manager confidential information pertaining to the state trust company or the company’s clients unless:

(1) the board adopts a resolution that designates the advisory director or advisory manager as a person who is officially connected to the trust company and that describes the purpose for disclosure of the information, which must be a reasonable business purpose; and

(2) the disclosure is made under a written confidentiality agreement between the state trust company and the advisory director or advisory manager.

SECTION 14. Sections 184.002(a) and (c), Finance Code, are amended to read as follows:

(a) Without the prior written approval of the banking commissioner, a state trust company may not directly or indirectly invest an amount in excess of the company's [60 percent of its] restricted capital in state trust company facilities, furniture, fixtures, and equipment. Except as otherwise provided by rules adopted under this subtitle, in computing the limitation provided by this subsection a state trust company:

(1) shall include:
   (A) its direct investment in state trust company facilities;
   (B) an investment in equity or investment securities of a company holding title to a facility used by the state trust company for the purposes specified by Section 184.001;
   (C) a loan made by the state trust company to or on the security of equity or investment securities issued by a company holding title to a facility used by the state trust company; and
   (D) any indebtedness incurred on state trust company facilities by a company:
      (i) that holds title to the facility;
      (ii) that is an affiliate of the state trust company; and
      (iii) in which the state trust company is invested in the manner described by Paragraph (B) or (C); and

(2) may exclude an amount included under Subdivisions (1)(B)-(D) to the extent any lease of a facility from the company holding title to the facility is capitalized on the books of the state trust company.

(c) A state trust company shall dispose of any real property subject to Subsection (a) not later than the fifth anniversary of the date the real property:

(1) was acquired, except as otherwise provided by rules adopted under this subtitle;
(2) ceases to be used as a state trust company facility; or
(3) ceases to be a [comply with regulatory accounting principles in accounting for its investment in and depreciation of] state trust company facility as provided by Subsection (b) [facilities, furniture, fixtures, and equipment].

SECTION 15. Section 185.003(b), Finance Code, is amended to read as follows:

(b) If the banking commissioner has grounds for action under Subsection (a) and finds that a removal or prohibition order appears to be necessary and in the best interest of the public [state trust company involved and its clients, creditors, shareholders, or participants], the banking commissioner may serve a proposed removal or prohibition order, as appropriate, on an officer, employee, director, manager or managing participant, controlling shareholder or participant, or other person alleged to have committed or participated in the violation or other conduct described by Section 185.002(a). The order must:

(1) be delivered by personal delivery or by registered or certified mail, return receipt requested;
(2) state with reasonable certainty the grounds for removal or prohibition;
(3) state the effective date of the order, which may not be before the 21st day after the date the proposed order is delivered or mailed; and
(4) state the duration of the order, including whether the duration of the order is perpetual.

SECTION 16. Section 185.106, Finance Code, is amended to read as follows:

Sec. 185.106. DUTIES OF STATE TRUST COMPANY UNDER SUPERVISION. During a period of supervision, a state trust company, without the prior approval of the banking commissioner or the supervisor or as otherwise permitted or restricted by the order of supervision, may not:

(1) dispose of, sell, transfer, convey, or encumber the state trust company's assets;
(2) lend or invest the state trust company's funds;
(3) incur a debt, obligation, or liability;
(4) pay a cash dividend to the state trust company's shareholders or participants; or
(5) solicit or accept any new client accounts; or
(6) remove an executive officer or director, change the number of executive officers or directors, or have any other change in the position of executive officer or director.

SECTION 17. Section 187.103(a), Finance Code, is amended to read as follows:

(a) An out-of-state trust company that does not operate a trust office in this state and that meets the requirements of this subchapter may acquire an existing trust institution in this state and after the acquisition operate and maintain the acquired institution as a trust office in this state, subject to Subchapter A, Chapter 183, or Subchapter A, Chapter 33, if applicable. [If the institution to be acquired is a bank or a state savings bank, Section 202.005 applies to the transaction.]

SECTION 18. Section 187.105(a), Finance Code, is amended to read as follows:

(a) A trust office of an out-of-state trust company may be acquired or established in this state under this subchapter if:

(1) the out-of-state trust company confirms in writing to the banking commissioner that while it maintains a trust office in this state, it will comply with all applicable laws of this state;
(2) the out-of-state trust company provides satisfactory evidence to the banking commissioner of compliance with Section 201.102 and the applicable requirements of its home state regulator for acquiring or establishing and maintaining the office;
(3) all filing fees have been paid as required by law; and
(4) the banking commissioner finds that:
   (A) applicable conditions of Section 187.102 or 187.103 have been met;
   (B) if a state bank is being acquired, the applicable requirements of Subchapter A, Chapter 33 (and Section 202.005) have been met, or if a state trust company is being acquired, the applicable requirements of Subchapter A, Chapter 183 have been met; and
   (C) any conditions imposed by the banking commissioner pursuant to Subsection (b) have been satisfied.

SECTION 19. Section 201.002(a)(7), Finance Code, is amended to read as follows:

(7) "Bank supervisory agency" means any of the following:
   (A) an agency of another state with primary responsibility for chartering and supervising banks;
   (B) the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System, or the Bureau of Consumer Financial Protection, and any successor to these agencies; or
   (C) an agency of a country, including a colony, dependency, possession, or political subdivision of a country, other than the United States with primary responsibility for chartering and supervising banks.

SECTION 20. Section 201.004, Finance Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

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(a) The laws of this state, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, apply to an interstate branch located in this state to the same extent the laws of this state would apply if the branch in this state were a branch of an out-of-state national bank [with its main office located] in this state, except to the extent otherwise provided under federal law. An out-of-state state bank that establishes an interstate branch in this state under this subtitle may conduct any activity at the branch in this state that is permissible under the laws of the bank's home state, to the extent the activity is permissible for a Texas state bank or for a branch of an out-of-state national bank in this state.

(d) This subtitle does not limit or affect the authority of:

(1) the home state regulator of a bank's home state to enforce any law applicable to a branch of an out-of-state state bank;

(2) a law enforcement officer, a regulatory supervisor, other than the commissioner, or another official of this state to enforce the laws of this state applicable to a branch of an out-of-state state bank; or

(3) this state to adopt, apply, or administer any tax or method of taxation to a bank, bank holding company, or foreign bank, or any affiliate of a bank, bank holding company, or foreign bank, to the extent that the tax or tax method is otherwise permissible by or under the United States Constitution or other federal law.

SECTION 21. Section 201.005, Finance Code, is amended by adding Subsection (c) to read as follows:

(c) A cooperative agreement entered into by the commissioner under this section does not limit the authority of a law enforcement officer, regulatory supervisor, or other official of this state who is not a party to the agreement to enforce the laws of this state applicable to a branch of an out-of-state state bank located in this state.

SECTION 22. Section 201.009(b), Finance Code, is amended to read as follows:

(b) If the commissioner determines that an interstate branch maintained by an out-of-state state bank in this state is being operated in violation of a law of this state that is applicable to the branch under Section 24(j), Federal Deposit Insurance Act (12 U.S.C. Section 1831a(j)), including a law that governs community reinvestment, fair lending, or consumer protection [or in an unsafe and unsound manner], the commissioner, with written notice to the home state regulator and subject to the terms of any applicable cooperative agreement with the home state regulator, may take any enforcement action the commissioner would be empowered to take if the branch were a Texas state bank or state savings bank, as the case may be, except that the commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action. An out-of-state state bank may appeal a final order or other decision of the commissioner under this subtitle as provided by Sections 31.202, 31.203, and 31.204, or as provided under Subtitle C with respect to a state savings bank.

SECTION 23. Section 203.002(a), Finance Code, is amended to read as follows:

(a) An out-of-state bank may establish a de novo branch in this state if:

(1) [the laws of the home state of the out-of-state bank would permit a Texas bank to establish and maintain a de novo branch in that state under substantially the same terms and conditions as set forth in this subchapter;]

(2) the out-of-state bank confirms in writing to the commissioner that as long as it maintains a branch in this state, it will comply with all applicable laws of this state;

(3) the applicant provides satisfactory evidence to the commissioner of compliance with the applicable requirements of Section 201.102; and

(4) the commissioner, acting on or before the 30th day after the date the commissioner receives notice of an application under Subsection (b), certifies to the responsible federal bank supervisory agency that the requirements of this subchapter have been met.

SECTION 24. Section 203.003(a), Finance Code, is amended to read as follows:

(a) The laws of the state of the out-of-state bank would permit a Texas bank to establish and maintain a de novo branch in that state under substantially the same terms and conditions as set forth in this subchapter;
(a) Subject to Section [Sections] 203.004 [and 203.005], one or more Texas banks may enter into an interstate merger transaction with one or more out-of-state banks under this chapter, and an out-of-state bank resulting from the transaction may maintain and operate the branches in this state of a Texas bank that participated in the transaction. An out-of-state bank that will be the resulting bank in the interstate merger transaction shall comply with Section 201.102.

SECTION 25. Section 203.007, Finance Code, is amended to read as follows:

Sec. 203.007. EXAMINATIONS[-PERIODIC REPORTS]. (a) With respect to an interstate branch maintained by an out-of-state state bank in this state, the [The] banking commissioner:

(1) with written notice to the home state regulator and subject to the terms of any applicable cooperative agreement with the home state regulator, may examine the branch for the purpose of determining whether the branch is in [may make examinations of a branch established and maintained in this state pursuant to this chapter by an out-of-state bank as the banking commissioner considers necessary to determine whether the branch is being operated in] compliance with the laws of this state that are applicable under Section 24(j), Federal Deposit Insurance Act (12 U.S.C. Section 1831a(j)), including laws governing community reinvestment, fair lending, and consumer protection; and

(2) if expressly permitted under and subject to the terms of any cooperative agreement with the home state regulator, or if the bank has been determined to be in a troubled condition by the home state regulator or the bank's appropriate federal banking agency, may participate in the examination of the bank by the home state regulator to ascertain whether the activities of the branch in this state are being conducted in an unsafe or unsound manner [and in accordance with safe and sound banking practices. Sections 31.105-31.107 or 96.05-96.057, as appropriate, apply to the examinations].

(b) For purposes of this section, a bank is considered to be in a troubled condition if the bank:

(1) has a composite rating, as determined in the bank's most recent report of examination, of four or five under the Uniform Financial Institutions Ratings System;

(2) is subject to a proceeding initiated by the Federal Deposit Insurance Corporation for termination or suspension of deposit insurance; or

(3) is subject to a proceeding initiated by the home state regulator to:

(A) vacate, revoke, or terminate the bank's charter;

(B) liquidate the bank; or

(C) appoint a receiver for the bank. [The commissioner may prescribe requirements for periodic reports from an out-of-state bank that operates a branch in Texas pursuant to this chapter. Reporting requirements prescribed by the commissioner under this section must be]

(4) consistent with the reporting requirements applicable to Texas state banks or state savings banks, as appropriate; and

(5) appropriate to discharge the responsibilities of the commissioner under this chapter.

SECTION 26. Sections 201.009(c), 203.003(c), and 203.005, Finance Code, are repealed.

SECTION 27. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

Passed by the House on April 18, 2013: Yeas 140, Nays 3, 2 present, not voting; passed by the Senate on May 20, 2013: Yeas 31, Nays 0.

Approved June 14, 2013.
Effective June 14, 2013.