

BILL ANALYSIS

Senate Research Center

S.B. 875
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Department of Banking (TDB) regulates state-chartered banks and trust companies. This bill addresses several concerns about trust companies operating in Texas.

The current statute establishes \$500,000 in restricted capital as the threshold for determining whether a trust company is solvent. This definition does not adequately cover trust companies that administer large amounts of fiduciary assets and are required to maintain restricted capital above the statutory minimum. Current law also does not accommodate exempt trust companies that have been allowed to maintain less than \$500,000 in restricted capital. S.B. 875 addresses this by defining insolvency as a function (50 percent) of restricted capital.

Trust companies are required to maintain at least 40 percent of restricted capital in liquid investments. A higher threshold is needed because in the case of insolvency, higher liquidity is crucial to efficiently winding down operations, and if too much time is required to convert illiquid assets into cash, account holders could be further harmed. S.B. 875 raises to 50 percent the amount of restricted capital that must be maintained in liquid investments.

Trust companies are examined by TDB annually. TDB should have discretion to examine trust companies more or less frequently, depending on the current need to protect the interests of account holders. S.B. 875 mirrors the provision concerning examination schedules for banks.

Currently, \$1 million in restricted capital is required to form a new trust company. Trust companies with exempt status have no current minimum restricted capital requirements. Higher minimum restricted capital amounts (\$2 million for new charters, \$250,000 for those with exempt status) are needed to ensure that sufficient funds are available in case of unexpected operating losses and providing reasonable means for liquidation should recapitalization not be possible.

Under current law, trust companies may apply for exempt status if they serve only family members within the fourth degree. A broader reach (seven degrees of a common ancestor) and more specific definitions are needed to address increased life expectancies and more complex family relationships (e.g., former spouses, stepchildren, foster children). S.B. 875 addresses these concerns, and grants the Finance Commission of Texas rulemaking authority to further define these terms if necessary.

Other changes are needed to simplify or strengthen other statutes concerning trust companies with exempt status. S.B. 875 will make confidential statements of condition and income; streamline the dates that annual certifications are required to be filed with TDB; and clarify the requirements for maintaining exempt status upon change of control.

S.B. 875 amends current law relating to the regulation of state trust companies.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Finance Commission of Texas is modified in SECTION 5 (Section 182.011, Finance Code) of this bill.

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 12 of this bill.

SECTION BY SECTION ANALYSIS

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

(15-a) Defines “equity capital.”

(25) Provides that “insolvent” means a circumstance or condition in which a state trust company:

(A) Makes no change to this paragraph;

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

(C)-(E) Makes no change to these paragraphs.

SECTION 2. Amends Section 181.104(a), Finance Code, as follows:

(a) Requires the banking commissioner of Texas or a person designated by the banking commissioner and acting under the banking commissioner's direction and authority (banking commissioner) to 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.

SECTION 3. Amends Section 181.107(c), Finance Code, as follows:

(c) Provides that a statement of condition and income is a public record except for portions of the statement designated confidential by the banking commissioner and the statement of condition and income for a state trust company exempt under Section 182.011 (Exemption From Statutory Provisions for Certain State Trust Companies) or 182.019 (Prior Exemption) with regard to the period during which the exemption is in effect, rather than except for portions designated to be confidential by the banking commissioner, a statement of condition and income is a public record.

SECTION 4. Amends Section 182.008(a), Finance Code, to prohibit the banking commissioner from issuing a charter to a state trust company having restricted capital of less than \$2 million, rather than less than \$1 million.

SECTION 5. Amends Section 182.011, Finance Code, by amending Subsections (a), (d), and (e) and adding Subsection (a-1), as follows:

(a) Authorizes the banking commissioner to grant the exemption in whole or in part subject to Subsection (c) (providing that a certain exemption may be made subject to conditions or limitations imposed by the banking commissioner consistent with this subtitle), if the banking commissioner finds that the state trust company:

(1) has only family clients and transacts business solely on behalf of family clients and their related interests;

(2) is wholly owned, directly or indirectly, legally or beneficially, by one or more family members; and

(3) does not hold itself out to the general public as a corporate fiduciary for hire.

Deletes existing text authorizing the banking commissioner to grant the exemption in whole or in part, if the banking commissioner finds that the state trust company does not transact business with the public. Deletes existing text providing that a state trust company does not transact business with the public if it does not make any sale, solicitation, arrangement, agreement, or transaction to provide a trust or other business service, whether or not for a fee, commission, or any other type of remuneration, with an individual who is not related within the fourth degree of affinity or consanguinity to an individual who controls the state trust company; or a sole proprietorship, partnership, joint venture, association, trust, estate, business trust, or corporation that is not wholly owned, by one or more individuals related within the fourth degree of affinity or consanguinity to an individual who controls the state trust company.

(a-1) Provides that in this section:

(1) "Family client" includes:

(A) a family member;

(B) a former family member;

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

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

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

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

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

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

(I) a revocable trust of which one or more other family clients are the sole grantors, including any such trust that becomes irrevocable, wholly or partly, for a reasonable transition period as specified by rule; and

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

(2) Defines "family member."

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

(d) Provides that a state trust company that is or has been exempt from a provision of this subtitle under this section or a predecessor statute may not transact business with the general public unless the banking commissioner determines, as provided by Section 182.003 (Application For State Trust Company Charter; Standards for Approval), that public convenience and advantage will be promoted by permitting the state trust company to engage in the trust business with the general public.

(e) Authorizes the finance commission to adopt rules:

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

(2) specifying the provisions of this subtitle that are subject to an exemption request;

(3) establishing procedures and requirements for obtaining, maintaining, or revoking an exemption; and

(4) defining or further defining terms used by this section.

Makes nonsubstantive changes.

SECTION 6. Amends Section 182.012, Finance Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires a state trust company requesting an exemption under Section 182.011 to file an application with the banking commissioner that includes:

(1)-(3) Makes no change to these subdivisions;

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

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

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

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

(D) will not transact business with the general public without prior notice written permission of the banking commissioner, rather than is not transacting business with the public and that the company will not transact business with the public without the prior written permission of the banking commissioner.

(5) and (6) Makes no change to these subdivisions.

(c) Defines “family client” and “family member” in this section.

SECTION 7. Amends Sections 182.013(a) and (c), Finance Code, as follows:

(a) Requires an exempt state trust company to file a certification annually with its statement of condition and income, on a form provided by the banking commissioner, that it is maintaining the conditions and limitations of its exemption. Deletes existing text requiring an exempt state trust company to file a certification before June 30 of each

year and that the certification is not valid unless it bears an acknowledgment stamped by the Texas Department of Banking.

(c) Requires the state trust company to maintain records necessary to verify the certification. Provides that the records are subject to examination under Section 181.104 (Examination Requirement). Deletes existing text authorizing the banking commissioner to examine or investigate the state trust company periodically as necessary to verify the certification.

SECTION 8. Amends Section 182.015, Finance Code, as follows:

Sec. 182.015. CHANGE OF CONTROL OF EXEMPT STATE TRUST COMPANY. Requires the acquiring person, if control of an exempt state trust company is sold or otherwise transferred, to comply with Sections 182.003, 182.004 (Notice and Investigation of Charter Application), 182.005 (Protest; Hearing; Decision on Charter Application), 183.001 (Acquisition of Control), and 183.002 (Application Regarding Acquisition of Control). Requires the acquiring person, for the exempt status of the state trust company to continue, to file a certification with the banking commissioner that the state trust company will comply, or continue to comply, with the requirements of Section 182.011 after control is transferred. Authorizes the banking commissioner to examine or investigate the acquiring person and the state trust company as necessary to verify the certification. Requires the commissioner, if the commissioner determines that the state trust company will not comply, or continue to comply, with the requirements of Section 182.011 after control is transferred, to terminate the exemption on the effective date of the transfer. Requires the requiring person to file a separate application to obtain a new exemption for the state trust company under Section 182.011.

Deletes existing text prohibiting control of an exempt state trust company from being sold or transferred with exempt status. Deletes existing text providing that the exempt status of the state trust company automatically terminates on the effective date of the transfer. Makes nonsubstantive changes.

SECTION 9. Amends Section 182.019, Finance Code, as follows:

Sec. 182.019. PRIOR EXEMPTION. (a) Creates this subsection from existing text. Provides that, subject to Subsection (b), a state trust company that was exempt before September 1, 1997, may no longer operate with that prior exempt status after the earlier of:

- (1) September 1, 2020; or
- (2) the date control is sold or otherwise transferred.

(b) Provides that a state trust company may apply for a new exemption under Section 182.011 before loss of its exempt status under Subsection (a).

Deletes existing text providing that a state trust company that was exempt under a predecessor to this subtitle is considered exempt under this subtitle.

SECTION 10. Amends Section 184.101(b), Finance Code, as follows:

(b) Requires a state trust company, unless the banking commissioner in writing approves maintenance of a lesser amount, to invest and maintain an amount equal to at least 50, rather than 40, percent of the state trust company's restricted capital under Section 182.008 (Restricted Capital) in investment securities that are readily marketable and can be converted to cash within four business days.

SECTION 11. Repealers: Sections 181.104(b) (requiring the banking commissioner to examine a state trust company more often than annually as the banking commissioner considers

necessary) and (c) (providing that the banking commissioner may defer an examination for not more than six months under certain circumstances), Finance Code.

Repealer: Section 182.013(b) (requiring the Texas Department of Banking to return a copy of a certain acknowledged annual certification to the state trust company within a certain time frame), Finance Code.

SECTION 12. (a) Requires a state trust company that has restricted capital in an amount that is less than the amount required by Section 182.008, Finance Code, as amended by this Act, not later than September 1, 2020, to increase its restricted capital to at least the amount required under that section, unless the state trust company has an exemption under Section 182.011 or 182.019, Finance Code, as amended by this Act. Authorizes a state trust company, as permitted by Section 182.008(e), to apply to the banking commissioner of Texas for approval of restricted capital in an amount that is less than the amount required under Section 182.008.

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

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

SECTION 13. Requires a state trust company, not later than September 1, 2016, to comply with the investment liquidity requirements of Section 184.101(b), Finance Code, as amended by this Act. Provides that the banking commissioner, on written application, may extend the period for compliance for a state trust company for good cause shown.

SECTION 14. Effective date: September 1, 2015.