

## CHAPTER 207

S.B. No. 455

AN ACT

relating to substitution of certain fiduciaries.

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

## SECTION 1. DEFINITIONS. In this Act:

(1) "Affiliated bank" means a state bank or a national bank having its main office in this state, more than 50 percent of the voting stock of which is owned directly or indirectly by the same bank holding company that owns more than 50 percent of the voting stock of a subsidiary trust company.

(2) "Bank holding company" has the meaning assigned by Section 2(a), Bank Holding Company Act of 1956 (12 U.S.C. Section 1841(a)).

(3) "Fiduciary" means an entity responsible for managing a fiduciary account.

(4) "Fiduciary account" means an account involving the exercise or performance of one or more of the corporate purposes specified by Section 1, Chapter 388, Acts of the 55th Legislature, Regular Session, 1957 (Article 1513a, Vernon's Texas Civil Statutes).

(5) "Situs of administration" means the county in which the fiduciary maintains the office primarily responsible for dealing with the parties involved in the fiduciary account.

(6) "Subsidiary trust company" means a corporation incorporated under Chapter 388, Acts of the 55th Legislature, Regular Session, 1957 (Article 1513a, Vernon's Texas Civil Statutes), a national bank organized for the purpose of conducting a trust business and business incidental to trust business and having its main office in this state, or a state bank or a national bank chartered to exercise trust powers and having its main office in this state, more than 50 percent of the voting stock of which corporation or bank is owned directly or indirectly by a bank holding company.

SECTION 2. TRANSFER OF FIDUCIARY ACCOUNTS. (a) A subsidiary trust company and one or more of its affiliated banks may enter into one or more agreements under which the subsidiary trust company is substituted as fiduciary for each affiliated bank in each fiduciary account listed in the agreement. The agreement shall be filed with the banking commissioner before the effective date of the substitution and must include:

(1) a list of each fiduciary account for which substitution is requested;

(2) a statement of whether the substitution will cause a transfer of the situs of administration of each fiduciary account; and

(3) the effective date of the substitution, which may not be less than 90 days after the date of the agreement.

(b) Not later than 90 days before the effective date of a substitution under this section, the parties to the substitution agreement shall send written notice of the substitution to the following:

(1) if the substitution does not effect a change in the situs of administration of the fiduciary account, to:

(A) each person who is readily ascertainable as a beneficiary of the account because of the receipt of statements of account by the person, or in the case of a minor beneficiary, by a parent, conservator, or guardian of the minor beneficiary;

(B) each cofiduciary;

- (C) each surviving settlor of a trust;
  - (D) each issuer of a security for which the affiliated bank administers a fiduciary account;
  - (E) the plan sponsor of each employee benefit plan;
  - (F) the principal of each agency account; and
  - (G) the guardian of the person of each ward under guardianship; or
- (2) if the substitution does effect a change in the situs of administration of fiduciary account, to:
- (A) each adult beneficiary;
  - (B) each parent, conservator, or guardian of a minor beneficiary receiving or entitled to receive current distributions of income or principal from the account;
  - (C) each cofiduciary;
  - (D) each person who alone or in conjunction with others has the power to remove a fiduciary being substituted;
  - (E) each surviving settlor of a trust;
  - (F) each issuer of a security for which the affiliated bank administers a fiduciary account;
  - (G) the plan sponsor of each employee benefit plan;
  - (H) the principal of each agency account; and
  - (I) the guardian of the person of each ward under guardianship.

(c) The notice must be sent by United States mail to the person's current address as shown on the fiduciary records. If the fiduciary has no address for the person on its records, the fiduciary shall make a reasonable attempt to ascertain the person's current address. The notice must disclose the effect that the substitution will have on the situs of administration of the fiduciary account, the person's rights with respect to objecting to the transfer of the fiduciary account, and the liability of the existing fiduciary and the substitute fiduciary for their actions. Intentional failure to send the required notice renders the substitution of fiduciary ineffective, but an unintentional failure to send the required notice does not impair the validity or effect of substitution. If a substitution of a subsidiary trust company is ineffective because of a defect in required notice, the actions taken by the subsidiary trust company before the determination of the invalidity of the substitution are valid if the actions would have been valid if performed by the affiliated bank.

(d) Except as provided by this subsection, the prospective designation in a will or other instrument of the affiliated bank as fiduciary is considered designation of the subsidiary trust company, and any grant in the will or other instrument of any discretionary power is considered conferred on the subsidiary trust company. However, the affiliated bank and the subsidiary trust company may agree in writing to have the designation of the affiliated bank as fiduciary be binding, or the creator of the fiduciary account may, by appropriate language in the document creating the fiduciary account, provide that the fiduciary account is not eligible for substitution under this Act.

(e) Substitution under this section is effective for all purposes on the effective date stated in the agreement between the subsidiary trust company and the affiliated bank, unless, not later than 15 days before the effective date:

(1) in the case of a substitution that will cause a change in the situs of administration, all parties entitled to notice for a fiduciary account under Subdivision (2) of Subsection (b) of this section provide the affiliated bank with a written objection to the proposed substitution; or

(2) in the case of any substitution, a party entitled to notice of the substitution under Subsection (b) of this section files a written petition in a court of competent jurisdiction seeking to have the substitution denied under Section 3 of this Act and provides the affiliated bank with a copy of the filed petition.

(f) If all parties object to the substitution under Subdivision (1) of Subsection (e) of this section, the substitution takes effect when any party objecting to the substitution removes in writing his objection or when the affiliated bank obtains a final order from a court of competent jurisdiction approving the substitution. If a petition is filed and notice is given under Subdivision (2) of Subsection (e) of this section, the substitution takes effect when the petition is withdrawn or dismissed or when the court enters a final order denying the relief sought.

(g) On the effective date the subsidiary trust company succeeds to all right, title, and interest in all property that the affiliated bank holds as fiduciary, except property held for accounts for which there has been no substitution under this Act, without the necessity of any instrument of transfer or conveyance, and the subsidiary trust company shall, without the necessity of any judicial action or action by the creator of the fiduciary account, become fiduciary and perform all the duties and obligations and exercise all the powers and authority connected with or incidental to that fiduciary capacity in the same manner as if the subsidiary trust company had been originally named or designated fiduciary. However, the affiliated bank is responsible and liable for all actions taken by it while it acted as fiduciary.

**SECTION 3. REMOVAL FROM AGREEMENT, REMOVAL OF SUBSIDIARY TRUST COMPANY, OR DENIAL OF SUBSTITUTION.** (a) A fiduciary account may be removed from the operation of the agreement by an amendment to the agreement filed with the banking commissioner before the effective date stated in the agreement.

(b) The substitution of a subsidiary trust company as fiduciary of an account may be denied if the court having jurisdiction, on notice and hearing, determines:

(1) in the case of a substitution that will not effect a change in the situs of administration, that the substitution of fiduciary is a material detriment to the account or to the beneficiaries of the account; or

(2) in the case of a substitution that will cause a change in the situs of administration, that the substitution of fiduciary is not in the best interests of the fiduciary account or its beneficiaries.

(c) The substitution of a subsidiary trust company as fiduciary of an account that will cause a change in the situs of administration shall be allowed if the court having jurisdiction, on notice and hearing, determines that the substitution is in the best interests of the fiduciary account and its beneficiaries.

(d) Subsection (b) of this section is cumulative to any applicable provision for removal of a fiduciary or appointment of a successor fiduciary in any other statute or in the instrument creating the fiduciary relationship.

(e) In any proceeding under this section the court may award costs and reasonable and necessary attorney's fees as the court considers equitable and just.

**SECTION 4. TRANSFER OF SITUS OF ADMINISTRATION AFTER SUBSTITUTION OF FIDUCIARIES.** (a) If the fiduciary of an account became the fiduciary under a substitution agreement as provided by this Act, not later than 90 days before the effective date of a change of the situs of administration of the account the fiduciary shall send notice of the change to the persons entitled to notice under Subdivision (2) of Subsection (b) of Section 2 of this Act.

(b) The notice must be sent by United States mail to the person's current address as shown on the fiduciary records. If the fiduciary has no address for the person on its records, the fiduciary shall make a reasonable attempt to ascertain the person's current address. The notice must disclose the effect that the transfer will have on the situs of administration of the fiduciary account and the person's rights with respect to objecting to the transfer. Intentional failure to send the required notice renders the transfer ineffective, but an unintentional failure to send the required notice does not impair the validity or effect of transfer.

(c) Transfer under this section is effective for all purposes on the effective date stated in the notice, unless, not later than 15 days before the effective date:

(1) all parties entitled to notice for a fiduciary account provide the subsidiary trust company with a written objection to the proposed transfer; or

(2) any party entitled to notice files a written petition to have the transfer denied in a court of competent jurisdiction and provides the subsidiary trust company with a copy of the filed petition.

(d) If all parties object to the transfer under Subdivision (1) of Subsection (c) of this section, the transfer takes effect when any party objecting to the transfer removes, in writing, his objection or when the subsidiary trust company obtains a final order from a court of competent jurisdiction approving the transfer. If a petition is filed and notice is given under Subdivision (2) of Subsection (c) of this section, the transfer takes effect when the petition is withdrawn or dismissed or when the court enters a final order denying the relief sought. The transfer may be allowed if the court having jurisdiction, on notice and hearing, determines that the transfer is in the best interests of the fiduciary account and its beneficiaries. The transfer may be denied if the court having jurisdiction, on notice and hearing, determines that the transfer is not in the best interests of the fiduciary account or its beneficiaries.

(e) In any proceeding under this section the court may award costs and reasonable and necessary attorney's fees as the court considers equitable and just.

**SECTION 5. VENUE.** Venue is in the county provided for by the Texas Probate Code with respect to the probate of a will, issuance of letters testamentary or administration, administration of a decedent's estate, appointment of a guardian, and administration of a guardianship. With respect to any other fiduciary account, for the purpose of any statute that would fix venue in the location of the principal office of the fiduciary, venue is in the county of the situs of administration unless any beneficiary of the fiduciary account elects venue in the county of the situs of the principal office of the first affiliated bank that transferred the fiduciary account under this Act.

**SECTION 6. DEPOSIT OF FUNDS WITH AFFILIATED BANK.** (a) A subsidiary trust company may deposit with an affiliated bank fiduciary funds that are being held pending investment, distribution, or payment of debts if:

(1) the subsidiary trust company maintains under its control as security for the deposit a separate fund of securities legal for trust investments pledged by the affiliated bank;

(2) the total market value of the security is at all times at least equal to the amount of the deposit; and

(3) the separate fund is designated as a separate fund.

(b) The affiliated bank may make periodic withdrawals from or additions to the separate fund of securities required by this section if the required value is maintained. Income from securities in the fund belongs to the affiliated bank.

(c) Security for a deposit under this section is not required to the extent the deposit is insured or otherwise secured under state or federal law.

**SECTION 7. UNDERTAKING OF RESPONSIBILITY FOR A SUBSIDIARY TRUST COMPANY.** (a) The subsidiary trust company's owning bank holding company shall file with the banking commissioner an irrevocable undertaking to be fully responsible for the existing and future fiduciary acts and omissions of its subsidiary trust company.

(b) If an affiliated bank has given bond to secure performance of its duties and the subsidiary trust company qualifies as successor fiduciary, the subsidiary trust company shall give bond to secure performance of its duties in the same manner.

**SECTION 8. SUBSIDIARY TRUST COMPANY AS SUCCESSOR.** For the purposes of qualification as successor fiduciary under any requirements contained in any document creating a fiduciary account or any statute of this state relating to fiduciary accounts, the subsidiary trust company:

(1) is considered to have capital and surplus equal to its capital and surplus plus the capital and surplus of its owning bank holding company; and

(2) shall be treated as a national bank, unless:

(A) it is not a national bank under federal law relating to national banks; and

(B) it has not entered into a substitution agreement with an affiliated bank that is a national bank under federal law relating to national banks.

**SECTION 9. EMERGENCY.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 23, 1987, by the following vote: Yeas 31, Nays 0. Passed the House on May 15, 1987, by the following vote: Yeas 144, Nays 0, one present not voting.

Approved May 28, 1987.

Effective May 28, 1987.