

CHAPTER 168

S.B. No. 916

AN ACT

relating to the regulation of trust companies and other corporations exercising trust powers.

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

SECTION 1. The Texas Banking Code of 1943, as amended (Article 342-101 et seq., Vernon's Texas Civil Statutes), is amended by adding Chapter XI to read as follows:

Chapter XI. TRUST COMPANIES

Art. 1. CREATION OF TRUST COMPANIES; POWERS.

Sec. 1. (a) *Prior to exercising trust powers, a trust company shall incorporate in accordance with this code. A trust company may incorporate for the following purpose: to act as a trustee, executor, administrator, or guardian when designated by any person, corporation, or court to do so and as agent for the performance of any lawful act, including the right to receive deposits made by agencies of the United States of America for the authorized account of any individual, and to lend and accumulate money without banking privileges, when licensed under provisions of Subtitle 2, Title 79, Revised Statutes.*

(b) *The State Banking Board shall hear and determine applications for state trust company charters.*

Sec. 2. *Every trust company with a capital of not less than \$500,000 shall, in addition to all other powers conferred by law, have the power: to purchase, sell, discount, and negotiate, with or without its endorsement or guaranty, notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to purchase and sell, with or without its endorsement or guaranty, stocks, bonds, securities, including the obligations of the United States or of any states thereof; to issue debentures, bonds, and promissory notes, to accept bills or drafts drawn upon it, but in no event having liabilities outstanding thereon at any one time exceeding five times its capital stock and surplus; provided, however, that with the consent in writing of the Banking Commissioner it may have outstanding at any one time 10 times the capital stock and surplus; and generally, to exercise such powers as are incidental to the powers conferred by this article.*

Sec. 3. *A separate charter is not required of a state bank or national bank or savings and loan association domiciled in this state if such institution is authorized to exercise trust powers pursuant to its charter.*

Sec. 4. *Any corporation with trust powers incorporated under any laws of this state prior to the effective date of this chapter shall, within one year of the effective date of this chapter, present its charter to the Banking Department. Upon presenting its existing charter, the corporation shall receive a substitute charter from the department.*

Art. 2. *APPLICABILITY OF STATE BANKING CODE. Unless otherwise provided in this chapter, a trust company is subject to the provisions of Chapters I, II, III, IV, V, VIII, and IX of this code as if the trust company were a state bank; provided, however, that Article 3, Chapter IX, relating to limited branch banking shall not apply.*

Art. 3. REGULATION BY BANKING COMMISSIONER; ANNUAL STATEMENT; EXAMINATION OF TRUST COMPANIES; PENALTIES.

Sec. 1. *Every trust company shall be subject to regulation by the Banking Commissioner of Texas and shall file with the commissioner on or before February 1 of each year a statement of its condition on the previous December 31, in such form as may be required by the commissioner, showing under oath its assets and liabilities, together with a fee of \$50 for filing; and such statement shall be published in a*

newspaper of general circulation published in the county in which the trust company is located. The commissioner may, for good cause shown, extend the time for filing such statement for not more than 60 days.

Sec. 2. (a) If any trust company fails to comply with the requirements of Section 1 of this article in the manner and within the time required, the company may be assessed a civil penalty by the commissioner. The penalty may not exceed \$1,000.

(b) A civil penalty may be assessed only after the trust company charged with a violation of Section 1 of this article has been given an opportunity for a public hearing.

(c) Civil penalties owed under this article may be recovered in a civil action brought by the attorney general at the request of the commissioner.

(d) A second failure to file such a statement as required shall be grounds for forfeiture of the charter of the trust company at the suit of the attorney general upon request of the Banking Commissioner.

Sec. 3. The Banking Commissioner shall have authority to examine or cause to be examined each trust company annually or more often if the commissioner deems it necessary. Such company shall pay the actual traveling expenses, hotel bills, and all other actual expenses incident to such examination, the equitable or proportionate cost of the maintenance and operation of the Banking Department, and the enforcement of this chapter. The commissioner shall annually determine the fee. Such fees, together with all other fees, penalties, and revenues collected by the Banking Department, shall be retained by the department and shall be expended only for the expenses of the department.

Sec. 4. Refusal on the part of any trust company to submit to an examination by the Banking Commissioner or his representatives or the withholding of information from the commissioner or his representatives shall constitute grounds for forfeiture of the charter of such company. Forfeiture of the company's charter may be obtained at the suit of the attorney general upon the request of the commissioner.

Sec. 5. The confidentiality provisions of Article 10, Chapter II, of this code apply to all information obtained by the Department relative to the financial condition of trust companies other than the annual statements required under Section 1 of this article.

Sec. 6. Trust companies shall be exempted from examination, paid-in capital requirements, and other provisions of this chapter if the Banking Commissioner finds that, upon application, a trust company is an inactive trust company or a trust company which does not transact business with the general public. A trust company that is inactive or does not conduct business with the general public shall annually certify to the Banking Department its inactive or nonpublic status. The Banking Commissioner may examine or cause to be examined such trust companies to verify the certification.

Art. 4. ACTION BY BANKING COMMISSIONER; OFFICERS AND DIRECTORS; CEASE AND DESIST ORDERS; REMOVAL; REVIEW. (a) With regard to a trust company, the Banking Commissioner of Texas may take action in accordance with Article 12, Chapter IV, of this code, as if the trust company were a state bank if the commissioner finds that an officer, director, or employee of the trust company, or the trust company itself acting through any authorized person:

- (1) violates any law or rule applicable to the trust company;
- (2) refuses to comply with any law or rule applicable to the trust company;
- (3) wilfully neglects to perform his or its duties or commits a breach of trust or of fiduciary duty;
- (4) commits any fraudulent or questionable practice in the conduct of the trust company's business that threatens the trust company's solvency;
- (5) refuses to submit to examination under oath;
- (6) conducts business in an unsafe or unauthorized manner; or

(7) violates any conditions of the trust company's charter or of any agreement entered with the Banking Commissioner of the Banking Department.

(b) An individual or trust company against which action is taken under this section may request review of that action in accordance with Article 12, Chapter IV, of this code, as if the trust company were a state bank.

Art. 5. ACTION BY BANKING COMMISSIONER; SUPERVISION AND CONSERVATORSHIP; REVIEW. (a) With regard to a trust company, the Banking Commissioner of Texas may take action in accordance with Article 1a, Chapter VIII, of this code, as if the trust company were a state bank if:

(1) it appears to the commissioner that the trust company is in a condition that would be an unsafe condition for a state bank under Article 1a and the trust company's condition renders the continuance of its business hazardous to the public or to the shareholders or creditors of the trust company;

(2) it appears to the commissioner considering Article 1a that the trust company has exceeded its powers;

(3) the trust company had failed to comply with the law; or

(4) the trust company gives written consent to supervision or conservatorship under this section.

(b) A trust company against which action is taken under this section may request review of that action in accordance with Article 1a, Chapter VIII, of this code, as if it were a state bank.

(c) A court of competent jurisdiction in the county where the trust company is located may appoint an independent receiver.

Art. 6. RULEMAKING AUTHORITY. (a) The State Banking Board shall promulgate and adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications.

(b) The Banking Section of the Finance Commission shall promulgate and adopt general rules and regulations as may be necessary to accomplish the purposes of this chapter.

Art. 7. COMPLIANCE WITH THE SECURITIES ACT. Any securities issued or sold by a trust company shall be issued and sold in compliance with all provisions of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), as it now exists or may hereafter be amended.

Art. 8. PAID-IN CAPITAL. (a) A trust company shall have and maintain a fully paid-in capital of not less than \$500,000.

(b) The commissioner may require additional capital of a trust company if he determines it necessary to protect the safety and soundness of the trust company.

Art. 9. DEMAND OR TIME DEPOSITS. No trust company shall accept demand or time deposits, except as otherwise provided in this chapter.

Art. 10. TRUST COMPANIES WHOSE OPERATIONS ARE PRINCIPALLY OUTSIDE STATE; FOREIGN CORPORATIONS.

Sec. 1. The provisions of this article shall apply to any trust company whose operations are principally conducted outside this state and any foreign corporations which are authorized to transact business in this state under a certificate of authority issued before September 1, 1979, which authorizes such corporation to exercise in this state all or any of the purposes, powers, or authorities referred to in Article 1 of this chapter. Provided, however, nothing in this article shall be construed as precluding any resident of the State of Texas from establishing a trust relationship with any state or national bank or trust company whether such state or national bank or trust company is or is not domiciled in the State of Texas.

Sec. 2. A trust company whose operations are principally conducted outside this state or a foreign corporation the operations of which are principally conducted outside this state, either directly, indirectly, or through a foreign or domestic subsidiary or affiliate, may not:

- (1) do business as a trust company in this state; or
- (2) exercise in this state any of the powers referred to in Article 1 of this chapter, except as provided by Section 105A, Texas Probate Code.

Sec. 3. Every foreign corporation that before September 1, 1979, was authorized to transact business in this state shall be subject to examination by the Banking Commissioner in the same manner and under the same terms and conditions as are domestic corporations. In lieu of such examinations, the Banking Commissioner may, in his discretion, accept reports of examination made by the supervising authority of the state in which the home office of such foreign corporation is domiciled. Failure to comply with this article shall constitute grounds for revocation of the certificate of authority of such foreign corporation to transact business in this state in an action filed by the attorney general upon the request of the Banking Commissioner.

Art. 11. TRUST COMPANIES OR FOREIGN CORPORATIONS; CONTROL OVER TRUST COMPANY.

Sec. 1. A trust company whose operations are principally conducted outside this state or a foreign corporation may acquire or control a trust company in this state, provided that it does so in compliance with applicable rules and regulations promulgated pursuant to Article 6 of this chapter.

Sec. 2. A trust company whose operations are principally conducted outside this state or a foreign corporation has control over a trust company if:

- (1) it directly or indirectly, such as by acting through one or more persons, corporations, partnerships, business trusts, associations, or similar organizations, owns, controls, or has power to vote 25 percent or more of the shares of any class of voting securities of the trust company;
- (2) it controls in any manner the election of a majority of the directors of the trust company; or
- (3) the Banking Commissioner determines that the trust company or foreign corporation directly or indirectly exercises a controlling influence over the management or policies of the trust company.

Sec. 3. The operations of a trust company are principally conducted outside this state if the largest amount of its total trust assets is held or administered outside this state.

Art. 12. SUPPLEMENTARY LAWS; ANTITRUST LAWS. Provisions of the Texas Business Corporation Act shall supplement the provisions of this chapter and shall apply to such trust companies to the extent that they are not inconsistent herewith; provided the provisions of Section A, Article 2.01, Texas Business Corporation Act, permitting a corporation to have more than one purpose, shall not apply. The power and authority herein conferred shall in no way affect any of the provisions of the antitrust laws of this state.

Art. 13. EXEMPTIONS. The provisions of this chapter shall not affect or apply to any state or federal credit union doing business in this state provided that such credit union is otherwise authorized to exercise trust powers.

SECTION 2. The following laws are repealed:

- (1) Article 1513, Revised Statutes;
- (2) Chapter 388, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 1513a, Vernon's Texas Civil Statutes).

SECTION 3. 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 March 31, 1987, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 14, 1987, by the following vote:

Yeas 30, Nays 0. Passed the House, with amendment, on May 8, 1987, by the following vote: Yeas 134, Nays 0, one present not voting.

Approved May 25, 1987.

Effective May 25, 1987.