

1-1 By: Eltife S.B. No. 875
 1-2 (In the Senate - Filed March 2, 2015; March 4, 2015, read
 1-3 first time and referred to Committee on Business and Commerce;
 1-4 March 31, 2015, reported favorably by the following vote: Yeas 7,
 1-5 Nays 0; March 31, 2015, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9			X	
1-10			X	
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the regulation of state trust companies.
 1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-21 SECTION 1. Section 181.002(a), Finance Code, is amended by
 1-22 adding Subdivision (15-a) and amending Subdivision (25) to read as
 1-23 follows:
 1-24 (15-a) "Equity capital" means the amount by which the
 1-25 total assets of a state trust company exceed the total liabilities
 1-26 of the trust company.
 1-27 (25) "Insolvent" means a circumstance or condition in
 1-28 which a state trust company:
 1-29 (A) is unable or lacks the means to meet its
 1-30 current obligations as they come due in the regular and ordinary
 1-31 course of business, even if the value of its assets exceeds its
 1-32 liabilities;
 1-33 (B) has equity capital that is 50 percent or less
 1-34 of the amount of restricted capital the trust company is required to
 1-35 maintain [~~less than \$500,000, as determined under regulatory~~
 1-36 ~~accounting principles~~];
 1-37 (C) fails to maintain deposit insurance for its
 1-38 deposits with the Federal Deposit Insurance Corporation or its
 1-39 successor, or fails to maintain adequate security for its deposits
 1-40 as provided by Section 184.301(c);
 1-41 (D) sells or attempts to sell substantially all
 1-42 of its assets or merges or attempts to merge substantially all of
 1-43 its assets or business with another entity other than as provided by
 1-44 Chapter 182; or
 1-45 (E) attempts to dissolve or liquidate other than
 1-46 as provided by Chapter 186.
 1-47 SECTION 2. Section 181.104(a), Finance Code, is amended to
 1-48 read as follows:
 1-49 (a) The banking commissioner shall examine each state trust
 1-50 company annually, or on another periodic basis as may be required by
 1-51 rule or policy, or as the commissioner considers necessary to:
 1-52 (1) safeguard the interests of clients, creditors,
 1-53 shareholders, participants, or participant-transferees; and
 1-54 (2) efficiently enforce applicable law.
 1-55 SECTION 3. Section 181.107(c), Finance Code, is amended to
 1-56 read as follows:
 1-57 (c) A [~~Except for portions designated to be confidential by~~
 1-58 ~~the banking commissioner, a~~] statement of condition and income is a
 1-59 public record except for:
 1-60 (1) portions of the statement designated confidential
 1-61 by the banking commissioner; and

2-1 (2) the statement of condition and income for a state
 2-2 trust company exempt under Section 182.011 or 182.019 with regard
 2-3 to the period during which the exemption is in effect.

2-4 SECTION 4. Section 182.008(a), Finance Code, is amended to
 2-5 read as follows:

2-6 (a) The banking commissioner may not issue a charter to a
 2-7 state trust company having restricted capital of less than \$2 [~~\$1~~]
 2-8 million.

2-9 SECTION 5. Section 182.011, Finance Code, is amended by
 2-10 amending Subsections (a), (d), and (e) and adding Subsection (a-1)
 2-11 to read as follows:

2-12 (a) A state trust company may request in writing that it be
 2-13 exempted from specified provisions of this subtitle. The banking
 2-14 commissioner may grant the exemption in whole or in part, subject to
 2-15 Subsection (c), if the banking commissioner finds that the state
 2-16 trust company ~~[does not transact business with the public. A state~~
 2-17 ~~trust company does not transact business with the public if it does~~
 2-18 ~~not make any sale, solicitation, arrangement, agreement, or~~
 2-19 ~~transaction to provide a trust or other business service, whether~~
 2-20 ~~or not for a fee, commission, or any other type of remuneration,~~
 2-21 ~~with]:~~

2-22 (1) has only family clients and transacts business
 2-23 solely on behalf of family clients and their related interests [an
 2-24 individual who is not related within the fourth degree of affinity
 2-25 or consanguinity to an individual who controls the state trust
 2-26 company]; [or]

2-27 (2) ~~[a sole proprietorship, partnership, joint~~
 2-28 ~~venture, association, trust, estate, business trust, or~~
 2-29 ~~corporation that] is [not] wholly owned, directly or indirectly,~~
 2-30 legally or beneficially, by one or more family members; and

2-31 (3) does not hold itself out to the general public as a
 2-32 corporate fiduciary for hire [individuals related within the fourth
 2-33 degree of affinity or consanguinity to an individual who controls
 2-34 the state trust company].

2-35 (a-1) In this section:

2-36 (1) "Family client" includes:

2-37 (A) a family member;

2-38 (B) a former family member;

2-39 (C) a key employee of the trust company as
 2-40 defined by and to the extent permitted by rules adopted under
 2-41 Subsection (e), including a former key employee for a reasonable
 2-42 transition period specified by rule;

2-43 (D) a nonprofit organization, charitable
 2-44 foundation, charitable trust, including a charitable lead trust or
 2-45 charitable remainder trust whose only current beneficiaries are
 2-46 other family clients and charitable or nonprofit organizations, or
 2-47 another charitable organization for which all the funding came
 2-48 exclusively from one or more other family clients;

2-49 (E) the estate of a family member or former
 2-50 family member;

2-51 (F) an irrevocable trust under which one or more
 2-52 other family clients are the only current beneficiaries;

2-53 (G) an irrevocable trust funded exclusively by
 2-54 one or more family clients in which other family clients and
 2-55 nonprofit organizations, charitable foundations, charitable
 2-56 trusts, or other charitable organizations are the only current
 2-57 beneficiaries;

2-58 (H) a company wholly owned by, and operated for
 2-59 the sole benefit of, one or more other family clients;

2-60 (I) a revocable trust of which one or more other
 2-61 family clients are the sole grantors, including any such trust that
 2-62 becomes irrevocable, wholly or partly, for a reasonable transition
 2-63 period as specified by rule; and

2-64 (J) any other persons as may be permitted by
 2-65 rules adopted under Subsection (e).

2-66 (2) "Family member," with respect to an individual,
 2-67 means an individual related to the individual within the seventh
 2-68 degree of consanguinity or affinity, as determined under Subchapter
 2-69 B, Chapter 573, Government Code, except that a foster child is

3-1 considered the child of the foster parent and a person for whom a
 3-2 guardian was appointed before the person's 18th birthday is
 3-3 considered the child of the guardian.

3-4 (3) "Former family member" includes a former spouse or
 3-5 stepchild who was a family member but is no longer a family member
 3-6 due to a divorce or other similar event.

3-7 (d) A state trust company that is or has been exempt from a
 3-8 provision of this subtitle under this section or a predecessor
 3-9 statute may not transact business with the general public unless
 3-10 the banking commissioner determines, as provided by Section
 3-11 182.003, that public convenience and advantage will be promoted by
 3-12 permitting the state trust company to engage in the trust business
 3-13 with the general public.

3-14 (e) The finance commission may adopt rules:

3-15 (1) defining other circumstances under which a state
 3-16 trust company may be exempted from a provision of this subtitle
 3-17 because it does not transact business with the general public;

3-18 (2) specifying the provisions of this subtitle that
 3-19 are subject to an exemption request; ~~and~~

3-20 (3) establishing procedures and requirements for
 3-21 obtaining, maintaining, or revoking an exemption; and

3-22 (4) defining or further defining terms used by this
 3-23 section.

3-24 SECTION 6. Section 182.012, Finance Code, is amended by
 3-25 amending Subsection (a) and adding Subsection (c) to read as
 3-26 follows:

3-27 (a) A state trust company requesting an exemption under
 3-28 Section 182.011 shall file an application with the banking
 3-29 commissioner that includes:

3-30 (1) a nonrefundable application fee set by the finance
 3-31 commission;

3-32 (2) a detailed sworn statement showing the state trust
 3-33 company's assets and liabilities as of the end of the calendar month
 3-34 preceding the filing of the application;

3-35 (3) a sworn statement of the reason for requesting the
 3-36 exemption;

3-37 (4) a sworn statement that the state trust company:

3-38 (A) has or will have only family clients and
 3-39 transacts or will transact business solely on behalf of family
 3-40 clients and their related interests;

3-41 (B) is or will be wholly owned, directly or
 3-42 indirectly, legally or beneficially, by one or more family members;

3-43 (C) does not or will not hold itself out to the
 3-44 general public as a corporate fiduciary for hire; and

3-45 (D) ~~is not transacting business with the public~~
 3-46 ~~and that the company~~ will not transact business with the general
 3-47 public without the prior written permission of the banking
 3-48 commissioner;

3-49 (5) the current street mailing address and telephone
 3-50 number of the physical location in this state at which the state
 3-51 trust company will maintain its books and records, with a sworn
 3-52 statement that the address given is true and correct and is not a
 3-53 United States Postal Service post office box or a private mail box,
 3-54 postal box, or mail drop; and

3-55 (6) a list of the specific provisions of this subtitle
 3-56 for which the request for an exemption is made.

3-57 (c) In this section, "family client" and "family member"
 3-58 have the meanings assigned by Section 182.011.

3-59 SECTION 7. Sections 182.013(a) and (c), Finance Code, are
 3-60 amended to read as follows:

3-61 (a) An ~~Before June 30 of each year, an~~ exempt state trust
 3-62 company shall file a certification annually with its statement of
 3-63 condition and income, on a form provided by the banking
 3-64 commissioner, that it is maintaining the conditions and limitations
 3-65 of its exemption. The certification must be accompanied by a fee
 3-66 set by the finance commission. ~~The certification is not valid~~
 3-67 ~~unless it bears an acknowledgment stamped by the department.~~

3-68 (c) The ~~banking commissioner may examine or investigate~~
 3-69 ~~the~~ state trust company shall maintain records ~~periodically as~~

4-1 necessary to verify the certification. The records are subject to
 4-2 examination under Section 181.104.

4-3 SECTION 8. Section 182.015, Finance Code, is amended to
 4-4 read as follows:

4-5 Sec. 182.015. CHANGE OF CONTROL OF EXEMPT STATE TRUST
 4-6 COMPANY. [~~Control of an exempt state trust company may not be sold~~
 4-7 ~~or transferred with exempt status.~~] If control of an exempt state
 4-8 trust company is sold or otherwise transferred, the acquiring
 4-9 person must comply with Sections 182.003, 182.004, 182.005, [~~and~~]
 4-10 183.001, and 183.002. For the exempt status of the state trust
 4-11 company to continue, the acquiring person must file a certification
 4-12 with the banking commissioner that the state trust company will
 4-13 comply, or continue to comply, with the requirements of Section
 4-14 182.011 after control is transferred. The banking commissioner may
 4-15 examine or investigate the acquiring person and the state trust
 4-16 company as necessary to verify the certification. If the
 4-17 commissioner determines that the state trust company will not
 4-18 comply, or continue to comply, with the requirements of Section
 4-19 182.011 after control is transferred, the commissioner shall
 4-20 terminate the exemption on the effective date of the transfer.
 4-21 After the termination, the [~~automatically terminates on the~~
 4-22 ~~effective date of the transfer. The~~] acquiring person must file a
 4-23 separate application to obtain a new [~~an~~] exemption for the state
 4-24 trust company under Section 182.011.

4-25 SECTION 9. Section 182.019, Finance Code, is amended to
 4-26 read as follows:

4-27 Sec. 182.019. PRIOR EXEMPTION. (a) Subject to Subsection
 4-28 (b), a [A] state trust company that was exempt before September 1,
 4-29 1997, may no longer operate with that prior exempt status after the
 4-30 earlier of:

4-31 (1) September 1, 2020; or
 4-32 (2) the date control is sold or otherwise transferred
 4-33 [~~under a predecessor to this subtitle is considered exempt under~~
 4-34 ~~this subtitle~~].

4-35 (b) A state trust company may apply for a new exemption
 4-36 under Section 182.011 before loss of its exempt status under
 4-37 Subsection (a).

4-38 SECTION 10. Section 184.101(b), Finance Code, is amended to
 4-39 read as follows:

4-40 (b) Unless the banking commissioner in writing approves
 4-41 maintenance of a lesser amount, a state trust company must invest
 4-42 and maintain an amount equal to at least 50 [~~40~~] percent of the
 4-43 state trust company's restricted capital under Section 182.008 in
 4-44 investment securities that are readily marketable and can be
 4-45 converted to cash within four business days.

4-46 SECTION 11. The following provisions of the Finance Code
 4-47 are repealed:

4-48 (1) Sections 181.104(b) and (c); and
 4-49 (2) Section 182.013(b).

4-50 SECTION 12. (a) Not later than September 1, 2020, a state
 4-51 trust company that has restricted capital in an amount that is less
 4-52 than the amount required by Section 182.008, Finance Code, as
 4-53 amended by this Act, shall increase its restricted capital to at
 4-54 least the amount required under that section, unless the state
 4-55 trust company has an exemption under Section 182.011 or 182.019,
 4-56 Finance Code, as amended by this Act. As permitted by Section
 4-57 182.008(e), Finance Code, a state trust company may apply to the
 4-58 banking commissioner of Texas for approval of restricted capital in
 4-59 an amount that is less than the amount required under Section
 4-60 182.008.

4-61 (b) A state trust company that has an exemption under
 4-62 Section 182.019, Finance Code, on September 1, 2015, and has
 4-63 restricted capital in an amount that is less than the amount
 4-64 required by Section 182.008(a), Finance Code, as amended by this
 4-65 Act, shall increase its restricted capital to at least \$250,000 on
 4-66 or before September 1, 2020.

4-67 (c) The Finance Commission of Texas may adopt rules
 4-68 specifying procedures for ratable increases in restricted capital
 4-69 for state trust companies as required by this section and for

5-1 deferrals and extensions of time for a state trust company acting in
5-2 good faith to achieve minimum required restricted capital.

5-3 SECTION 13. Not later than September 1, 2016, a state trust
5-4 company shall comply with the investment liquidity requirements of
5-5 Section 184.101(b), Finance Code, as amended by this Act. On
5-6 written application, the banking commissioner of Texas may extend
5-7 the period for compliance for a state trust company for good cause
5-8 shown.

5-9 SECTION 14. This Act takes effect September 1, 2015.

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