

CSBS STATUTORY OPTIONS FOR MULTISTATE TRUST ACTIVITIES

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MULTISTATE TRUST INSTITUTIONS ACT*

CHAPTER 1. GENERAL PROVISIONS; TRUST INSTITUTION AUTHORIZED ACTIVITIES

SUBCHAPTER A. GENERAL

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CHAPTER 1. GENERAL PROVISIONS; TRUST INSTITUTION AUTHORIZED ACTIVITIES

SUBCHAPTER A. GENERAL

§ 1.001. Title and Purposes

- (a) This Act may be cited as the Multistate Trust Institutions Act.
- (b) It is the express intent of this Act to permit banks and other depository institutions, foreign banks and trust companies to engage in the trust business on a multistate and international basis to the extent consistent with the safety and soundness of the trust institutions engaged in a trust business in this state and the protection of consumers, clients and other customers of such trust institutions.

§ 1.002. Certain Definitions

- (a) In this Act:
 - (1) "Account" means the client relationship established with a trust company involving the transfer of funds or property to the trust company, including a relationship in which the trust company acts as trustee, executor, administrator, guardian, custodian, conservator, bailee, receiver, registrar, or agent, but excluding a relationship in which the trust company acts solely in an advisory capacity.
 - (2) "Act as a fiduciary" or "acting as a fiduciary" means to:
 - (A) accept or execute trusts, including to (i) act as trustee under a written agreement; (ii) receive money or other property in its capacity as trustee for investment in real or

* *DRAFTING NOTE: These two chapters of the Act, together with Chapters 3, 4 and 5 in Appendix One and Chapters 6, 7 and 8 in Appendix Two, comprise a comprehensive Multistate Trust Institutions Act.*

personal property; (iii) act as trustee and perform the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction; (iv) act as trustee of the estate of a deceased person; or (v) act as trustee for a minor or incapacitated person;

(B) administer in any other fiduciary capacity real or tangible personal property; or

(C) act pursuant to order of court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person.

(3) "Administer" with respect to real or tangible personal property means, as an agent or in another representative capacity, to possess, purchase, sell, lease or insure, safekeep or otherwise manage the property;

(4) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with a trust institution or other company.

(5) "Bank" has the meaning set forth in 12 U.S.C. § 1813(h); provided that the term "bank" shall not include any "foreign bank" as defined in 12 U.S.C. § 3101(7), except for any such foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(6) "Bank supervisory agency" means:

(A) Any agency of another state with primary responsibility for chartering and supervising a trust institution; and

(B) The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision and any successor to these agencies.

(7) "Branch" with respect to a depository institution has the meaning set forth in **[state banking statute(s) defining "branch"]**.

(8) "Charter" means a charter, license or other authority issued by the Commissioner or a bank supervisory agency authorizing a trust institution to act as a fiduciary in its home state.

(9) "Client" means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution or as an advisor or agent, regardless of whether the trust institution owes a fiduciary duty to the person. The term includes the non-contingent beneficiaries of an account.

(10) "Commissioner" means the Commissioner of Banks then in office and, where appropriate, all of his or her successors and predecessors in office. *[DRAFTING NOTE: If your state uses a different title for the responsible supervisor of State-chartered banks, you should change this definition to conform to the title of the responsible supervisor, and the term "Commissioner" as used throughout this Chapter should be changed.]*

(11) "Company" includes a bank, trust company, corporation, limited liability company, partnership, association, business trust, or another trust.

(12) "Department" means the **[state]** Department of Banking.

(13) "Depository institution" means any company chartered to act as a fiduciary and included for any purpose within any of the definitions of "insured depository institution" as set forth in 12 U.S.C. §§ 1813(c)(2) & (3).

(14) "Fiduciary record" means a matter written, transcribed, recorded, received or otherwise in the possession or control of a trust company, whether in physical or electromagnetic form, that is necessary to preserve information concerning an act or event relevant to an account or a client of a trust company.

(15) "Foreign bank" means a foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978, chartered to act as a fiduciary in a state other than this state.

(16) "Home state" means (A) with respect to a federally chartered trust institution and a foreign bank, the state in which such institution maintains its principal office and (B) with respect to any other trust institution, the state which chartered such institution.

(17) "Home state regulator" means the bank supervisory agency with primary responsibility for chartering and supervising an out-of-state trust institution.

(18) "Host state" means a state, other than the home state of a trust institution, or a foreign country in which the trust institution maintains or seeks to acquire or establish an office.

(19) "License" means the authority granted by the Commissioner pursuant to this Act to establish, acquire or maintain a trust office.

(20) "New trust office" means a trust office located in a host state which (i) is originally established by the trust institution as a trust office and (ii) does not become a trust office of the trust institution as a result of (A) the acquisition of another trust institution or trust office of another trust institution or (B) a merger, consolidation, or conversion involving any such trust institution or trust office.

(21) "Office" with respect to a trust institution means the principal office, a trust office or a representative trust office, but not a branch.

(22) "Out-of-state bank" means a bank chartered to act as a fiduciary in any state or states other than this state.

(23) "Out-of-state trust company" means either a trust company that is not a state trust company or a savings association whose principal office is not located in this state.

(24) "Out-of-state trust institution" means a trust institution that is not a state trust institution.

(25) "Person" means an individual, a company or any other legal entity.

(26) "Principal office" with respect to:

(A) a state trust company, means a location registered with the Commissioner as the state trust company's home office at which:

- (i) the state trust company does business;
- (ii) the state trust company keeps its corporate books and a set of its material records, including material fiduciary records; and
- (iii) at least one executive officer of the state trust company maintains an office; or

(B) a trust institution other than a state trust company, means its principal place of business in the United States.

(27) "Registration" means the process by which a trust institution has been authorized by the Commissioner to acquire, establish or maintain a representative trust office in this state.

(28) "Representative trust office" means an office at which a trust institution has been authorized by the Commissioner to engage in a trust business other than acting as a fiduciary.

(29) "Savings association" means a depository institution that is neither a bank nor a foreign bank.

(30) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(31) "State bank" means (A) a bank chartered to act as a fiduciary by this state or (B) a foreign bank as defined in section 1(b)(7) of the International Banking Act of 1978 chartered to act as a fiduciary in this state.

(32) "State trust company" means a corporation or a limited liability trust company organized or reorganized under this Act, including a trust company organized under the laws of this state before the effective date of this Act.

(33) "State trust institution" means a trust institution having its principal office in this state.

(34) "Trust business" means the holding out by a person to the public by advertising, solicitation or other means that the person is available to perform any service of a fiduciary in this or another state, including but not limited to:

(A) acting as a fiduciary, or

(B) to the extent not acting as a fiduciary, any of the following: (i) receiving for safekeeping personal property of every description; (ii) acting as assignee, bailee, conservator, custodian, escrow agent, registrar, receiver or transfer agent; or (iii) acting as financial advisor, investment advisor or manager, agent or attorney-in-fact in any agreed upon capacity.

(35) "Trust company" means a state trust company or any other company chartered to act as a fiduciary that is neither a depository institution nor a foreign bank.

(36) "Trust institution" means a depository institution, foreign bank, state bank or trust company.

(37) "Trust office" means an office, other than the principal office, at which a trust institution is licensed by the Commissioner to act as a fiduciary.

(38) "Unauthorized trust activity" means (A) a company, other than one identified in section 1.101(a), acting as a fiduciary within this state, (B) a company engaging in a trust business in this state at any office of such company that is not its principal office, if it is a state trust institution, or that is not a trust office or a representative trust office of such company, or (C) an out-of-state trust institution engaging in a trust business in this state at any time an order issued by the Commissioner pursuant to section 2.302(b) is in effect.

(b) These definitions shall be liberally construed to accomplish the purposes of the Act. Additional definitions applicable to this Act are contained in section 6.001. The Department by rule may adopt other definitions to accomplish the purposes of this Act.

§ 1.003. Regulations

The Commissioner may promulgate such regulations as he or she determines to be necessary or appropriate in order to implement the provisions of this Act.

§ 1.004. Severability.

If any provision of this Act or the application of such provision is found by any court of competent jurisdiction in the United States to be invalid as to any trust institution or other person or circumstance, or to be superseded by federal law, the remaining provisions of this Act shall not be affected and shall continue to apply to any trust institution or other person or circumstance.

SUBCHAPTER B. COMPANIES AUTHORIZED TO ACT AS A FIDUCIARY

Section

- 1.101 COMPANIES AUTHORIZED TO ACT AS A FIDUCIARY.
- 1.102 ACTIVITIES NOT REQUIRING A CHARTER, ETC.
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SUBCHAPTER B. COMPANIES AUTHORIZED TO ACT AS A FIDUCIARY

§ 1.101. Companies Authorized to Act as a Fiduciary

- (a) No company shall act as a fiduciary in this state except:
 - (1) A state trust company;
 - (2) A state bank;
 - (3) A savings association organized under the laws of this state and authorized to act as a fiduciary pursuant to **[state savings association law]**.
 - (4) A national bank having its principal office in this state and authorized by the Comptroller of the Currency to act as a fiduciary pursuant to 12 U.S.C. 92a.
 - (5) A federally chartered savings association having its principal office in this state and authorized by its federal chartering authority to act as a fiduciary.
 - (6) An out-of-state bank with a branch in this state established or maintained pursuant to **[state interstate banking and branching act]** or a trust office licensed by the Commissioner pursuant to this Act.
 - (7) An out-of-state trust company with a trust office licensed by the Commissioner pursuant to this Act.
 - (8) A foreign bank with a trust office licensed by the Commissioner pursuant to this Act, or

(9) **[Pursuant to the provisions of this state's reciprocal trust activities act, if any].**

(b) No company shall engage in an unauthorized trust activity.

§ 1.102. Activities Not Requiring a Charter, Etc.

Notwithstanding any other provision of this Act, a company does not engage in the trust business or in any other business in a manner requiring a charter, license or registration under this Act or in an unauthorized trust activity by:

(a) acting in a manner authorized by law and in the scope of authority as an agent of a trust institution with respect to an activity which is not an unauthorized trust activity;

(b) rendering a service customarily performed as an attorney or law firm in a manner approved and authorized by the Supreme Court **[or State Bar]** of this state;

(c) acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;

(d) engaging in the [_____] business regulated by **[applicable state agencies]**;

(e) receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the **[state real estate agency]**;

(f) engaging in a securities transaction or providing an investment advisory service as a licensed and registered broker-dealer, investment advisor or registered representative thereof, provided the activity is regulated by the state **[blue sky regulator]** or the Securities and Exchange Commission;

(g) engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the Department of Insurance to the extent that the activity is regulated by the Department of Insurance;

(h) engaging in the lawful sale of prepaid funeral benefits under a permit issued by **[applicable state regulator]** under **[applicable provision of law]** or engaging in the lawful business of a perpetual care cemetery corporation under **[applicable provision of law]**;

(i) acting as trustee under a voting trust as provided by **[applicable provision of law]**;

(j) acting as trustee by a public, private, or independent institution of higher education or a university system, as those terms are defined by **[applicable provision of law]**, including its affiliated foundations or corporations, with respect to endowment funds or other funds owned, controlled, provided to or otherwise made available to such institution with respect to its educational or research purposes;

(k) engaging in other activities expressly excluded from the application of this Act by rule of the Department;

(l) rendering services customarily performed by a certified public accountant in a manner authorized by the **[state regulator of public accountants]**;

(m) provided the company is a trust institution and is not barred by order of the Commissioner from engaging in a trust business in this state pursuant to section 2.302(b) hereof, (1) marketing or soliciting in this state through the mails, telephone, any electronic means or in person with respect to acting or proposing to act as a fiduciary outside of this state, (2) delivering money or other intangible assets and receiving the same from a client or other person in this state; or (3) accepting or executing outside of this state a trust of any client or otherwise acting as a fiduciary outside of this state for any client.

§ 1.103. Trust Business of State Trust Institution

(a) A state trust institution may act as a fiduciary or otherwise engage in a trust business in this or any other state or foreign country, subject to complying with applicable laws of such state or foreign country, at an office established and maintained pursuant to this Act, at a branch or at any location other than an office or branch.

(b) In addition, a state trust institution may conduct any activities at any office outside this state that are permissible for a trust institution chartered by the host state where the office is located, except to the extent such activities are expressly prohibited by the laws of this state or by any regulation or order of the Commissioner applicable to the state trust institution; provided, however, that the Commissioner may waive any such prohibition if he or she determines, by order or regulation, that the involvement of out-of-state offices of state trust institutions in particular activities would not threaten the safety or soundness of such state trust institutions.

§ 1.104. Trust Business of Out-Of-State Trust Institution

An out-of-state trust institution which establishes or maintains one or more offices in this state under this Act may conduct any activity at each such office which would be authorized under the laws of this state for a state trust institution to conduct at such an office.

§ 1.105. Name of Trust Institution

A state trust company or out-of-state trust institution may register any name with the Commissioner in connection with establishing a principal office, trust office or representative trust office in this state pursuant to this Act, except that the Commissioner may determine that a name proposed to be registered is potentially misleading to the public and require the registrant to select a name which is not potentially misleading.

CHAPTER 2. TRUST INSTITUTION OFFICES

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CHAPTER 2. TRUST INSTITUTION OFFICES

SUBCHAPTER A. STATE TRUST INSTITUTION OFFICES

§ 2.001. Trust Business

A state trust company or a state bank may:

- (a) perform any act as a fiduciary;
- (b) engage in any trust business;
- (c) exercise any incidental power that is reasonably necessary to enable it to fully exercise, according to commonly accepted fiduciary customs and usages, a power conferred in this Act; and
- (d) if a state trust company, exercise any other power authorized by Section 4.101 of this Act.

§ 2.002. Branches and Offices of State Trust Institutions

- (a) A state trust institution may act as a fiduciary and engage in a trust business at each trust office as permitted by this Act and at a branch.
- (b) A state trust institution may not act as a fiduciary but may otherwise engage in a trust business at a representative trust office as permitted by this Act.
- (c) Notwithstanding the foregoing subsections (a) and (b), a state bank or a state trust company may not engage at an out-of-state office in any trust business not permitted for such an office by the host state where the office is located to trust institutions chartered by such state.

§ 2.003. State Trust Company Principal Office

- (a) Each state trust company must have and continuously maintain a principal office in this state.
- (b) Each executive officer at the principal office is an agent of the state trust company for service of process.
- (c) A state trust company may change its principal office to any location within this state by filing a written notice with the Commissioner setting forth the name of the state trust company, the street address of its principal office before the change, the street address to which the principal office is to be changed, and a copy of the resolution adopted by the board authorizing the change.
- (d) The change of principal office shall take effect on the 31st day after the date the Commissioner receives the notice pursuant to paragraph (c) above, unless the Commissioner establishes an earlier or later date or unless prior to such day the Commissioner notifies the state trust company that it must establish to the satisfaction of the Commissioner that the relocation is consistent with the original determination made under section 4.003(b) of this Act for the establishment of a state trust company at that location, in which event the change of principal office shall take effect when approved by the Commissioner.

§ 2.004. Trust Office; Representative Trust Office

(a) A state trust institution may establish or acquire and maintain trust offices or representative trust offices anywhere in this state. A state trust institution desiring to establish or acquire and maintain such an office shall file a written notice with the Commissioner setting forth the name of the state trust institution, the location of the proposed additional office and whether the additional office will be a trust office or a representative trust office, furnish a copy of the resolution adopted by the board authorizing the additional office and pay the filing fee, if any, prescribed by the Commissioner.

(b) The notificant may commence business at the additional office on the 31st day after the date the Commissioner receives the notice, unless the Commissioner specifies an earlier or later date.

(c) The 30 day period of review may be extended by the Commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust institution may establish the additional office only on prior written approval by the Commissioner.

(d) The Commissioner may deny approval of the additional office if the Commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest.

§ 2.005. Out-of-State Offices

(a) A state bank, a state trust company or a savings association chartered under the laws of this state may establish and maintain a new trust office or a representative trust office or acquire and maintain an office in a state other than this state. Such a trust institution desiring to establish or acquire and maintain an office in another state under this section shall file a notice on a form prescribed by the Commissioner, which shall set forth the name of the trust institution, the location of the proposed office, whether the office will be a trust office or a representative trust office, and whether the laws of the jurisdiction where the office will be located permit the office to be maintained by the trust institution, furnish a copy of the resolution adopted by the board authorizing the out-of-state office, and pay the filing fee, if any, prescribed by the Commissioner.

(b) The notificant may commence business at the additional office on the 31st day after the date the Commissioner receives the notice, unless the Commissioner specifies an earlier or later date.

(c) The 30 day period of review may be extended by the Commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the trust institution may establish the additional office only on prior written approval by the Commissioner.

(d) The Commissioner may deny approval of the additional office if the Commissioner finds

that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest. In acting on the notice, the Commissioner shall consider the views of the appropriate bank supervisory agencies.

SUBCHAPTER B. OUT-OF-STATE TRUST INSTITUTION TRUST OFFICE

§ 2.101. Trust Business at a Branch or Trust Office

An out-of-state trust institution may act as a fiduciary in this state or engage in a trust business at an office in this state only if it maintains (i) a trust office in this state as permitted by this subchapter or (ii) a branch in this state.

§ 2.102. Establishing an Interstate Trust Office

(a) An out-of-state trust institution that does not operate a trust office in this state and that meets the requirements of this subchapter may establish and maintain a new trust office in this state.

[(OPTIONAL PROVISION: b) Until January 1, 1999, an out-of-state trust institution may not establish a new trust office in this state unless a similar institution chartered under the laws of this state to act as a fiduciary, is permitted to establish a new trust office that may engage in activities substantially similar to those permitted to trust offices of out-of-state trust institutions under section 2.101 of this Act, in the state where such out-of-state trust institution has its principal office.]

§ 2.103. Acquiring an Interstate Trust Office

(a) An out-of-state trust institution that does not operate a trust office in this state and that meets the requirements of this subchapter may acquire and maintain a trust office in this state.

[(OPTIONAL PROVISION: b) Until January 1, 1999, no out-of-state trust institution may maintain a trust office in this state unless a similar institution chartered under the laws of this state to act as a fiduciary is permitted to acquire and maintain a trust office through an acquisition of a trust office in the state where such out of state trust institution has its principal office and may engage in activities substantially similar to those permitted to trust offices of out-of-state trust institutions under section 2.101 of this Act, in the state where such out-of-state trust institution has its principal office.]

§ 2.104. Requirement of Notice

An out-of-state trust institution desiring to establish and maintain a new trust office or acquire and maintain a trust office in this state pursuant to this subchapter shall provide, or cause its home state regulator to provide, written notice of the proposed transaction to the Commissioner on or after the date on which the out-of-state trust institution applies to the home state regulator for approval to establish

and maintain or acquire the trust office. The filing of such notice shall be preceded or accompanied by a copy of the resolution adopted by the board authorizing the additional office and the filing fee, if any, prescribed by the Commissioner.

§ 2.105. Conditions for Approval

(a) No trust office of an out-of-state trust institution may be acquired or established in this state under this subchapter unless:

(1) The out-of-state trust institution shall have confirmed in writing to the Commissioner that for as long as it maintains a trust office in this state, it will comply with all applicable laws of this state.

(2) The notificant shall have provided satisfactory evidence to the Commissioner of compliance with (i) any applicable requirements of **[state foreign corporation qualification statute]** and (ii) the applicable requirements of its home state regulator for acquiring or establishing and maintaining such office.

(3) The Commissioner, acting within 60 days after receiving notice under section 2.104, shall have certified to the home state regulator that the requirements of this subchapter have been met and the notice has been approved or, if applicable, that any conditions imposed by the Commissioner pursuant to paragraph (b) below have been satisfied.

(b) The out-of-state trust institution may commence business at the trust office on the 61st day after the date the Commissioner receives the notice unless the Commissioner specifies an earlier or later date, provided, with respect to an out-of-state trust institution that is not a depository institution and for which the Commissioner shall have conditioned such approval on the satisfaction by the notificant of any requirement applicable to a state trust company pursuant to section 4.103(b) or section 4.107 of this Act, such institution shall have satisfied such conditions and provided to the Commissioner satisfactory evidence thereof.

(c) The 60 day period of review may be extended by the Commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may establish the office only on prior written approval by the Commissioner.

(d) The Commissioner may deny approval of the office if the Commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office is contrary to the public interest. In acting on the notice, the Commissioner shall consider the views of the appropriate bank supervisory agencies.

§ 2.106. Additional Trust Offices

An out-of-state trust institution that maintains a trust office in this state under this subchapter

may establish or acquire additional trust offices or representative trust offices in this state to the same extent that a state trust institution may establish or acquire additional offices in this state pursuant to the procedures for establishing or acquiring such offices set forth in section 2.004.

SUBCHAPTER C. OUT-OF-STATE TRUST INSTITUTION REPRESENTATIVE TRUST OFFICE

§ 2.201. Representative Trust Office Business

(a) An out-of-state trust institution may not act as a fiduciary, but may otherwise engage in a trust business, at a representative trust office as permitted by this subchapter.

(b) Subject to the requirements contained in this subchapter, an out-of-state trust institution may establish and maintain representative trust offices anywhere in this state.

§ 2.202. Registration of Representative Trust Office

(a) An out-of-state trust institution may establish or acquire and maintain a representative trust office in this state. An out-of-state trust institution not maintaining a trust office in this state and desiring to establish or acquire and maintain a representative trust office shall file a notice on a form prescribed by the Commissioner which shall set forth the name of the out-of-state trust institution and the location of the proposed office and satisfactory evidence that the notificant is a trust institution, furnish a copy of the resolution adopted by the board authorizing the representative trust office, and pay the filing fee, if any, prescribed by the Commissioner.

(b) The notificant may commence business at the representative trust office on the 31st day after the date the Commissioner receives the notice, unless the Commissioner specifies an earlier or later date.

(c) The 30 day period of review may be extended by the Commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may establish the representative trust office only on prior written approval by the Commissioner.

(d) The Commissioner may deny approval of the representative trust office if the Commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interests. In acting on the notice, the Commissioner shall consider the views of the appropriate bank supervisory agencies.

SUBCHAPTER D. SUPERVISION OF OUT-OF-STATE TRUST INSTITUTION

§ 2.301. Examinations; Periodic Reports; Cooperative Agreements; Assessment of Fees

(a) To the extent consistent with subsection (c) of this section, the Commissioner may make

such examinations of any office established and maintained in this state pursuant to this chapter by an out-of-state trust institution as the Commissioner may deem necessary to determine whether the office is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The provisions of **[state bank examination statute]** shall apply to such examinations.

(b) The Commissioner may require periodic reports regarding any out-of-state trust institution that has established and maintained an office in this state pursuant to this chapter. The required reports shall be provided by such trust institution or by the home state regulator. Any reporting requirements prescribed by the Commissioner under this subsection (b) shall be (i) consistent with the reporting requirements applicable to state trust companies and (ii) appropriate for the purpose of enabling the Commissioner to carry out his or her responsibilities under this chapter.

(c) The Commissioner may enter into cooperative, coordinating and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any office in this state of an out-of-state trust institution, or any office of a state trust institution in any host state, and the Commissioner may accept such a party's report of examination and report of investigation in lieu of conducting his or her own examination or investigation.

(d) The Commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a state trust institution or an out-of-state trust institution maintaining an office in this state to engage the services of such agency's examiners at a reasonable rate of compensation, or to provide the services of the Commissioner's examiners to such agency at a reasonable rate of compensation. Any such contract shall be deemed a sole source contract under **[appropriate section of state procurement law]**.

(e) The Commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any office established and maintained in this state by an out-of-state trust institution or any office established and maintained by a state trust institution in any host state; provided, that the Commissioner may at any time take such actions independently if the Commissioner deems such actions to be necessary or appropriate to carry out his or her responsibilities under this subchapter or to ensure compliance with the laws of this state; but provided further, that, in the case of an out-of-state trust institution, the Commissioner shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(f) Each out-of-state trust institution that maintains one or more offices in this state may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this state and regulations of the Commissioner. Such fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between such parties and the Commissioner.

§ 2.302. Enforcement

Consistent with [state administrative procedures act], after notice and opportunity for hearing,

(a) The Commissioner may determine:

(1) that an office maintained by an out-of-state trust institution in this state is being operated in violation of any provision of the laws of this state or in an unsafe and unsound manner; or

(2) that a company is engaged in an unauthorized trust activity.

In either event, the Commissioner shall have the authority to take all such enforcement actions as he or she would be empowered to take if the office or the company were a state trust company, including but not limited to issuing an order temporarily or permanently prohibiting the company from engaging in a trust business in this state;

(b) The Commissioner may determine by order that an out-of-state trust institution engaging in or proposing to engage in a trust business in this state does not meet the requirements for establishing a representative trust office in this state pursuant to section 2.202, which order shall be effective on the date of issuance or such other date as the Commissioner shall determine;

(c) In cases involving extraordinary circumstances requiring immediate action, the Commissioner may take any action permitted by section 2.302 (a) or (b) without notice or opportunity for hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken. The Commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state trust institution and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving said enforcement action.

§ 2.303. Notice of Subsequent Merger, Closing, Etc.

Each out-of-state trust institution that maintains an office in this state pursuant to this chapter, or the home state regulator of such trust institution, shall give at least 30 days' prior written notice (or, in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law) to the Commissioner of (i) any merger, consolidation, or other transaction that would cause a change of control with respect to such out-of-state trust institution or any bank holding company that controls such trust institution, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, 12 U.S.C. §1817(j), or the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. §1841 *et seq.*, or any successor statutes thereto, (ii) any transfer of all or substantially all of the trust accounts or trust assets of the out-of-state trust institution to another person or (iii) the closing or disposition of any office in this state.

APPENDIX ONE

ADDITIONAL CHAPTERS OF MULTISTATE TRUST INSTITUTIONS ACT TO STRENGTHEN STATE TRUST INSTITUTIONS

STATE TRUST INSTITUTION CHARTER MODERNIZATION ACT

CHAPTER 3. TRUSTS AND FIDUCIARIES

Section

- 3.001. TITLE AND PURPOSES.
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SUBCHAPTER A. DESIGNATION OF TRUSTEE AND GOVERNING LAW

Section

- 3.101. DESIGNATION OF TRUSTEE.
- 3.102. CHOICE OF LAW GOVERNING TRUSTS.
- 3.103. CHOICE OF LAW GOVERNING FIDUCIARY INVESTMENTS.

SUBCHAPTER B. DELEGATION; AFFILIATES

Section

- 3.201. DELEGATION AND FIDUCIARY RESPONSIBILITY.
- 3.202. AFFILIATES.

SUBCHAPTER C. FEES

Section

- 3.301. FEE DETERMINATION.
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SUBCHAPTER D. ACQUISITION OF TRUST ASSETS

Section

- 3.401. PURCHASE OF ASSETS OF ANOTHER TRUST INSTITUTION.

CHAPTER 4. STATE TRUST COMPANY

SUBCHAPTER A. ORGANIZATION; GENERAL

Section

- 4.101. ORGANIZATION AND POWERS OF STATE TRUST COMPANY.
- 4.102. ARTICLES OF ASSOCIATION OF STATE TRUST COMPANY.
- 4.103. APPLICATION FOR STATE TRUST COMPANY CHARTER.
- 4.103. NOTICE AND INVESTIGATION OF CHARTER APPLICATION.
- 4.105. HEARING AND DECISION ON CHARTER APPLICATION.
- 4.106. ISSUANCE OF CHARTER.
- 4.107. REQUIRED CAPITAL.
- 4.108. APPLICATION OF LAWS RELATING TO GENERAL BUSINESS CORPORATIONS.
- 4.109. COMMISSIONER HEARINGS; APPEALS.
- [4.110 TRUST COMPANIES CHARTERED UNDER PRIOR LAW. *OPTIONAL PROVISION*]**

SUBCHAPTER B. AMENDMENT OF ARTICLES;
CHANGES IN CAPITAL AND SURPLUS

Section

- 4.201. AMENDMENT OF STATE TRUST COMPANY ARTICLES OF ASSOCIATION.
- 4.202. ESTABLISHING A SERIES OF SHARES OR PARTICIPATION SHARES.
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SUBCHAPTER C. PRIVATE TRUST COMPANY

Section

- 4.301. PRIVATE TRUST COMPANY.
- 4.302. REQUIREMENTS TO APPLY FOR AND MAINTAIN STATUS AS A PRIVATE TRUST COMPANY.
- 4.303. CONVERSION TO PUBLIC TRUST COMPANY.

CHAPTER 5. INVESTMENTS, LOANS AND DEPOSITS

SUBCHAPTER A. ACQUISITION AND OWNERSHIP
OF STATE TRUST COMPANY FACILITIES AND OTHER REAL ESTATE

Section

- 5.001. INVESTMENT IN STATE TRUST COMPANY FACILITIES.
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Section

- 5.101. SECURITIES.
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- 5.104. MUTUAL FUNDS.
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5.201. LENDING LIMITS.

5.202. LEASE FINANCING TRANSACTIONS.

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5.301. TRUST DEPOSITS.

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SUBCHAPTER E. LIABILITIES AND PLEDGE OF ASSETS

Section

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CHAPTER 3. TRUSTS AND FIDUCIARIES

Section

- 3.001. TITLE AND PURPOSES.
- 3.002. DEFINITIONS.

SUBCHAPTER A. DESIGNATION OF TRUSTEE AND GOVERNING LAW

Section

- 3.101. DESIGNATION OF TRUSTEE.
- 3.102. CHOICE OF LAW GOVERNING TRUSTS.
- 3.103. CHOICE OF LAW GOVERNING FIDUCIARY INVESTMENTS.

SUBCHAPTER B. DELEGATION; AFFILIATES

Section

- 3.201. DELEGATION AND FIDUCIARY RESPONSIBILITY.
- 3.202. AFFILIATES.

SUBCHAPTER C. FEES

Section

- 3.301. FEE DETERMINATION.
- 3.302. DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST.

CHAPTER 3. TRUSTS AND FIDUCIARIES

§ 3.001. Title and Purposes

- (a) This Act may be cited as the State Trust Institution Charter Modernization Act.
- (b) The express purposes of this Act are to:

(1) provide for the chartering of trust companies and to permit trust companies to act as fiduciaries and otherwise engage in the trust business in this state, *provided* they are adequately capitalized, competently managed by persons of integrity, and supervised by the Commissioner of Banks, all in order to ensure that such trust companies are operated in compliance with law, in a safe and sound manner and in a manner which protects their clients and customers and other consumers in this state;

(2) improve service and reduce costs for trust institution clients and customers and other consumers in this state by modernizing state laws to permit the delegation by trust institutions of fiduciary functions but not fiduciary responsibility, authorize clients to designate any trust institution to act for them and to choose an appropriate state's law to govern fiduciary instruments and investments, and protect

consumers from excessive fees or undisclosed conflicts of interest of trust institutions and their affiliates; and

(3) permit adequately capitalized and professionally managed trust companies serving only family members and their affiliated entities to operate as private trust companies which may not provide services to the general public.

§ 3.002. Definitions

Definitions contained in sections 1.002 and 6.001 of the Multistate Trust Institutions Act shall apply to this Act unless the context otherwise requires.

SUBCHAPTER A. DESIGNATION OF TRUSTEE AND GOVERNING LAW

§ 3.101. Designation of Trustee

Any person residing in this state may designate any trust institution to act as a fiduciary on behalf of such person.

§ 3.102. Choice of Law Governing Trusts

Any trust institution that maintains a trust office or representative trust office in this state and its affected clients may designate either (i) this state, (ii) a state where affected clients reside or (iii) the state where such trust institution has its principal office as the state whose laws shall govern any written agreement between such trust institution and its client or any instrument under which the trust institution acts for a client.

§ 3.103. Choice of Law Governing Fiduciary Investments

Any trust institution that maintains a trust office or representative trust office in this state and its affected clients may designate either (i) this state, (ii) a state where affected clients reside or (iii) the state where such trust institution has its principal office as the state whose laws shall govern with respect to the fiduciary investment standards applicable to any written agreement between such trust institution or its client and any other instrument under which the trust institution acts for a client.

SUBCHAPTER B. DELEGATION; AFFILIATES

§ 3.201. Delegation and Fiduciary Responsibility

(a) Any person acting as a trustee or as any other fiduciary under the laws of this state may delegate any investment, management or administrative function if such person exercises reasonable care, judgment and caution in:

- (1) selecting the delegate, taking into account the delegate's financial standing and

reputation;

(2) establishing the scope and other terms of any delegation; and

(3) reviewing periodically the delegate's actions in order to monitor overall performance and compliance with the scope and other terms of the delegation.

(b) Notwithstanding any delegation permitted by subsection (a) of this section, any person acting as a trustee or in any other fiduciary capacity under the laws of this state shall retain responsibility for the due performance of any delegated fiduciary function.

§ 3.202. Affiliates

(a) Any person acting as a trustee or in any other fiduciary capacity under section 3.201 may hire and compensate, as a delegate, an affiliate of such person if:

(1) authorized by a trust or fiduciary instrument;

(2) authorized by court order;

(3) authorized in writing by each affected client; or

(4) the standards of section 3.201 are satisfied.

(b) Fees paid to an affiliate shall be competitive with fees charged by non-affiliates that provide substantially similar services.

[DRAFTING NOTE: Optional proviso to subsection (b):

. . . provided, if an affiliate is used pursuant to subsection (a)(4) above, the amount of fees paid to the affiliate shall also be consistent with best execution.]

SUBCHAPTER C. FEES

§ 3.301. Fee Determination

The compensation arrangement between a client and any person acting as a trustee or as any other fiduciary pursuant to this Act shall be at arm's length and any compensation pursuant to such arrangement shall be a reasonable amount with respect to the services rendered.

§ 3.302. Disclosure of Potential Conflicts of Interest

(a) Any company, proposing to act as a trustee or in any other fiduciary capacity pursuant to a written agreement to be entered into with a prospective client after the effective date of this Act, which company has any potential or actual conflict of interest which may reasonably be expected to

have an impact on the independence or judgment of such trustee or fiduciary, shall deliver a disclosure statement to the prospective client (i) not less than 48 hours prior to entering into any written or oral trust or fiduciary agreement with such client or prospective client, or (ii) at the time of entering into any such agreement if the client has a right to terminate the agreement without penalty within 3 or more business days after entering into the agreement.

(b) The disclosure statement shall contain appropriate information concerning the actual or potential conflict of interest. If such trustee or other fiduciary proposes to delegate any fiduciary function to an affiliate, the nature of the affiliation and whether the trustee or other fiduciary may directly benefit from the delegation shall be disclosed in the disclosure statement.

SUBCHAPTER D. ACQUISITION OF TRUST ASSETS

§ 3.401. Purchase of Assets of Another Trust Institution

(a) Subject to the provisions of this section 3.401, a trust institution may purchase assets of a state trust company or trust-related assets of another trust institution, including the right to control accounts established with the trust institution. Except as otherwise expressly provided by this or another statute, the purchase of all or part of the assets of the trust institution does not make the purchasing trust institution responsible for any liability or obligation of the selling trust institution that the purchasing trust institution does not expressly assume. Except as otherwise provided by this Act, this subchapter does not govern or prohibit the purchase by a state trust institution of all or part of the assets of a corporation or other entity that is not a trust institution.

(b) If the acquiring institution is a state bank, a state trust company, an out-of-state trust institution which maintains neither a branch nor a trust office in this state, or a savings association chartered under the laws of this state, an application in the form required by the Commissioner must be filed with the Commissioner for any acquisition of all or substantially all of (i) the assets of a state trust company or (ii) the trust assets of another trust institution. The Commissioner shall investigate the condition of the purchaser and seller and may require the submission of additional information as considered necessary to make an informed decision. The Commissioner shall approve the purchase if:

(1) the acquiring trust institution will be solvent and have sufficient capitalization for its business and location;

(2) the acquiring trust institution has complied with all applicable statutes and rules including without limitation any applicable requirements of chapter 3 of this Act;

(3) all fiduciary obligations and liabilities of the parties have been properly discharged or otherwise assumed by the acquiring trust institution;

(4) all conditions imposed by the Commissioner have been satisfied or otherwise resolved; and

(5) all fees and costs have been paid.

(c) A purchase requiring an application pursuant to section 3.401(b) is effective on the date of approval, unless the purchase agreement provides for, and the Commissioner consents to, a different effective date.

(d) The acquiring trust institution shall succeed by operation of law to all of the rights, privileges and obligations of the selling trust institution under each account included in the assets acquired.

CHAPTER 4. STATE TRUST COMPANY

SUBCHAPTER A. ORGANIZATION; GENERAL

Section

- 4.101. ORGANIZATION AND POWERS OF STATE TRUST COMPANY.
- 4.102. ARTICLES OF ASSOCIATION OF STATE TRUST COMPANY.
- 4.103. APPLICATION FOR STATE TRUST COMPANY CHARTER.
- 4.103. NOTICE AND INVESTIGATION OF CHARTER APPLICATION.
- 4.105. HEARING AND DECISION ON CHARTER APPLICATION.
- 4.106. ISSUANCE OF CHARTER.
- 4.107. REQUIRED CAPITAL.
- 4.108. APPLICATION OF LAWS RELATING TO GENERAL BUSINESS CORPORATIONS.
- 4.109. COMMISSIONER HEARINGS; APPEALS.
- 4.110 TRUST COMPANIES CHARTERED UNDER PRIOR LAW.

SUBCHAPTER B. AMENDMENT OF ARTICLES; CHANGES IN CAPITAL AND SURPLUS

Section

- 4.201. AMENDMENT OF STATE TRUST COMPANY ARTICLES OF ASSOCIATION.
- 4.202. ESTABLISHING A SERIES OF SHARES OR PARTICIPATION SHARES.
- 4.203. CHANGE IN OUTSTANDING CAPITAL AND SURPLUS.
- 4.204. CAPITAL NOTES OR DEBENTURES.

SUBCHAPTER C. PRIVATE TRUST COMPANY

Section

- 4.301. PRIVATE TRUST COMPANY.
- 4.302. REQUIREMENTS TO APPLY FOR AND MAINTAIN STATUS AS A PRIVATE TRUST COMPANY.
- 4.303. CONVERSION TO PUBLIC TRUST COMPANY.

CHAPTER 4. STATE TRUST COMPANY

SUBCHAPTER A. ORGANIZATION; GENERAL

§ 4.101. Organization and Powers of State Trust Company

(a) Subject to the other provisions of this chapter, one or more persons may organize and charter a state trust company. A state trust company may perform any act as a fiduciary or engage in any trust business within or without this state.

(b) Subject to section 4.108 of this Act, a state trust company may exercise the powers of a [state] business corporation reasonably necessary or helpful to enable exercise of its specific powers

under this Act.

(c) A state trust company may contribute to community funds, or to charitable, philanthropic, or benevolent instrumentalities conducive to public welfare, amounts that its board considers appropriate and in the interests of the state trust company.

(d) Subject to section 5.301 of this Act, a state trust company may deposit trust funds with itself or an affiliate.

(e) Subject to obtaining any required insurance from the Federal Deposit Insurance Corporation (FDIC), a state trust company may receive and pay deposits with or without interest, made by agencies of the United States Government or of a state, county, or municipality.

§ 4.102. Articles of Association of State Trust Company

The articles of association of a state trust company must be signed and acknowledged by each organizer and must contain:

- (a) the name of the state trust company;
- (b) the period of its duration, which may be perpetual;
- (c) the powers of the state trust company, which may be stated as:
 - (1) all powers granted to a state trust company in this state; or
 - (2) a list of the specific powers that the state trust company chooses and is authorized to exercise;
- (d) the aggregate number of shares, or participation shares in the case of a limited liability trust company, that the state trust company will be authorized to issue, the number of classes of shares or participation shares, which may be one or more, the number of shares or participation shares of each class if more than one class, and a statement of the par value of the shares or participation shares of each class or that the shares or participation shares are to be without par value;
- (e) if the shares or participation shares are to be divided into classes, the designation of each class and statement of the preferences, limitations, and relative rights of the shares or participation shares of each class, which in the case of a limited trust association may be more fully set forth in the participation agreement;
- (f) any provision limiting or denying to shareholders or participants the preemptive right to acquire additional or treasury shares or participation shares of the state trust company;
- (g) any provision granting the right of shareholders or participants to cumulative

voting in the election of directors or managers;

(h) the aggregate amount of consideration to be received for all shares or participation shares initially issued by the state trust company, and a statement that all authorized shares or participation shares have been subscribed and that all subscriptions received provide for the consideration to be fully paid in cash before issuance of the charter;

(i) any provision consistent with law that the organizers elect to set forth in the articles of association for the regulation of the internal affairs of the state trust company or that is otherwise required by this Act to be set forth in the articles of association;

(j) the street address of the state trust company's principal office required to be maintained under section 2.003 of this Act; and

(k) the number of directors or managers constituting the initial board, which may not be fewer than 5 or more than 25, and the names and street addresses of the persons who are to serve as directors or managers until the first annual meeting of shareholders or participants or until successor directors or managers have been elected and qualified; or, at the option of the organizers of a limited liability trust company, that will have not fewer than 5 or more than 25 participants, a statement that management is vested in a board comprised of all participants, with management authority vested in each participant in proportion to the participant's contribution to capital as adjusted from time to time to properly reflect any additional contribution, and the names and street addresses of the persons who are to be the initial managing participants.

§ 4.103. Application for State Trust Company Charter

(a) An application for a state trust company charter must be made under oath and in the form required by the Commissioner and must be supported by information, data, records, and opinions of counsel that the Commissioner requires. The application must be accompanied by all charter fees and deposits required by statute or rule.

(b) The Commissioner shall grant a state trust company charter only on proof that one or more viable markets exist within or outside of this state that may be served in a profitable manner by the establishment of the proposed state trust company. In making such a determination, the Commissioner shall (i) examine the business plan which shall be submitted as part of the application for a state trust company charter and (ii) consider:

(1) the market or markets to be served;

(2) whether the proposed organizational and capital structure and amount of initial capitalization is adequate for the proposed business and location;

(3) whether the anticipated volume and nature of business indicates a reasonable probability of success and profitability based on the market sought to be served;

(4) whether the proposed officers, directors, and managers, or managing participants, as a group, have sufficient fiduciary experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed state trust company will operate in compliance with law and that success of the proposed state trust company is probable;

(5) whether each principal shareholder or participant has sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law; and

(6) whether the organizers are acting in good faith.

(c) The failure of an applicant to furnish required information, data, opinions of counsel, other material or the required fee is considered an abandonment of the application.

§ 4.104. Notice and Investigation of Charter Application

(a) The Commissioner shall notify the organizers when the application is complete and accepted for filing and all required fees and deposits have been paid. Promptly after this notification, the organizers shall publish notice of the application and solicit comments in form specified by the Commissioner at locations reasonably necessary to solicit the views of potentially affected persons specified by the Commissioner by regulation.

(b) At the expense of the organizers, the Commissioner shall investigate the application and inquire into the identity and character of each proposed director, manager, officer, managing participant, and principal shareholder or participant. The Commissioner shall prepare a written report of the investigation, and any person may request a copy of the nonconfidential portions of the application and written report as provided by **[applicable provision of state law]**. Rules adopted under this Act may specify the confidential or nonconfidential character of information obtained by the Department under this section. Except as provided in rules regarding confidential information, the financial statement of a proposed officer, director, manager, or managing participant is confidential and not subject to public disclosure.

§ 4.105. Hearing and Decision on Charter Application

(a) Any person may file a protest to an application.

(b) On or after the 15th day after the last date the notice was published under section 4.104 of this Act, the Commissioner shall determine whether the application meets the requirements of section 4.103(b) of this Act, based on the application and investigation, and approve the application for charter or set the charter application for hearing.

(c) If the Commissioner sets a hearing, the Commissioner shall conduct a public hearing and

as many prehearing conferences and opportunities for discovery as the Commissioner considers advisable and consistent with governing statutes and rules.

(d) Based on the record of any hearing set pursuant to paragraph (c) above, the Commissioner shall determine whether all of the necessary conditions set forth in section 4.103(b) of this Act have been established and shall enter an order granting or denying the charter. The Commissioner may make approval of any application conditional and shall include any conditions in the order granting the charter.

§ 4.106. Issuance of Charter

(a) A state trust company may not engage in the trust business until it receives its charter from the Commissioner. The Commissioner may not deliver the charter until the state trust company has:

(1) received cash or marketable securities in at least the full amount of required capital from subscriptions for the issuance of shares or participation shares;

(2) elected or qualified the initial officers and directors or managers, as appropriate, named in the application for charter or other officers and directors or managers approved by the Commissioner; and

(3) complied with all other requirements of this Act relative to the organization of a state trust company.

(b) If a state trust company does not open and engage in the trust business within six months after the date it receives its charter or conditional approval of application for charter, or within such further period as such period may be extended, the Commissioner shall revoke the charter or cancel the conditional approval of application for charter without judicial action.

§ 4.107. Required Capital

(a) The Commissioner may not issue a charter to a state trust company having required capital of less than \$[] except as provided in subsection (b) of this section.

(b) The Commissioner may require additional capital for a proposed or existing state trust company or, on application in the exercise of discretion consistent with protecting safety and soundness, reduce the amount of minimum capital required for a proposed or existing state trust company, if the Commissioner finds the condition and operations of an existing state trust company or the proposed scope or type of operations of a proposed state trust company requires additional, or permits reduced, capital consistent with the safety and soundness of the state trust company. The safety and soundness factors to be considered by the Commissioner in the exercise of such discretion include but are not limited to,

(1) the nature and type of business conducted;

- (2) the nature and degree of liquidity in assets held in a corporate capacity;
 - (3) the amount of fiduciary assets under management;
 - (4) the type of fiduciary assets held and the depository of such assets;
 - (5) the complexity of fiduciary duties and degree of discretion undertaken;
 - (6) the competence and experience of management;
 - (7) the extent and adequacy of internal controls;
 - (8) the presence or absence of annual unqualified audits by an independent certified public accountant;
 - (9) the reasonableness of business plans for retaining or acquiring additional capital;
- and
- (10) the existence and adequacy of insurance obtained or held by the trust company for the purpose of protecting its clients, beneficiaries and grantors.

(c) The proposed effective date of an order requiring an existing state trust company to increase its capital must be stated in the order as on or after the 21st day after the date the proposed order is mailed or delivered. Unless the state trust company requests a hearing before the Commissioner in writing before the effective date of the proposed order, the order becomes effective and is final and nonappealable. This subsection does not prohibit an application to reduce capital requirements of a proposed or an existing state trust company under subsection (b) of this section.

(d) Subject to subsection (b) of this section and section 4.301 of this Act, a state trust company to which the Commissioner issues a charter shall at all times maintain capital in at least the amount required under subsection (a) of this section, plus any additional amount or less any reduction the Commissioner directs under subsection (b) of this section.

§ 4.108. Application of Laws Relating to General Business Corporations

(a) The [state] Business Corporation Act applies to a trust company to the extent not inconsistent with this Act or the proper business of a trust company, except that;

(1) a reference to the secretary of state means the Commissioner unless the context requires otherwise; and,

(2) the right of shareholders or participants to cumulative voting in the election of directors or managers exists only if granted by the state trust company's articles of association.

(b) Unless expressly authorized by this Act or a rule of the Department, a trust company may not take an action authorized by the [state] Business Corporation Act regarding its corporate status, capital structure, or a matter of corporate governance, of the type for which the [state] Business Corporation Act would require a filing with the secretary of state if the trust company were a business corporation, without first submitting the filing to the Commissioner for the same purposes for which it otherwise would be required to be submitted to the secretary of state.

(c) The Department may adopt rules to limit or refine the applicability of subsection (a) of this section to a trust company or to alter or supplement the procedures and requirements of the [state] Business Corporation Act applicable to an action taken under this chapter.

§ 4.109. Commissioner Hearings; Appeals

(a) This section does not grant a right to hearing to a person that is not otherwise granted by governing law.

(b) The Commissioner may convene a hearing to receive evidence and argument regarding any matter before the Commissioner for decision or review under this Act. The hearing must be conducted under [applicable provision of state law].

(c) A hearing before the Commissioner that is required or authorized by law may be conducted by a hearing officer on behalf of the Commissioner. A matter made confidential by law must be considered by the Commissioner in a closed hearing.

(d) Except as expressly provided otherwise by this Act, a decision or order of the Commissioner made under this Act after hearing may be appealed directly to the District Court of [] as provided by subsection (e) of this section.

(e) A person affected by a final order of the Commissioner that elects to appeal directly to district court may appeal the final order by filing a petition for judicial review under the substantial evidence rule in the District Court of [] as provided by [applicable provision of state law]. A petition for appeal filed in the district court does not stay or vacate the appealed order unless the court, after notice and hearing, expressly stays or vacates the order.

[DRAFTING NOTE: Optional Provision:]

§ 4.110. Trust Companies Chartered Under Prior Law

The charter of a corporation with trust powers incorporated under any laws of this state before _____, is void if the charter was not presented to the Department before _____, 199__ for substitution of a charter or if the Department did not issue a new substitution charter before _____, 199__.]

SUBCHAPTER C. AMENDMENT OF ARTICLES;

CHANGES IN CAPITAL AND SURPLUS

§ 4.201. Amendment of State Trust Company Articles of Association

(a) A state trust company that has been granted a charter under section 4.106 of this Act or a predecessor statute may amend or restate its articles of association for any lawful purpose, including the creation of authorized but unissued shares or participation shares in one or more classes or series.

(b) An amendment authorizing the issuance of shares or participation shares in series must contain:

(1) the designation of each series and a of any variations in the preferences, imitations, and relative rights among series to the extent that the preferences, limitations, and relative rights are to be established in the articles of association; and

(2) a statement of any authority to be vested in the board to establish series and determine the preferences, limitations, and relative rights of each series

(c) A limited liability trust company may not amend its articles of association to extend its period of existence for a perpetual period or for any period of years, unless the period of existence is expressly contingent on those events resulting in dissolution of the limited liability trust company under subchapter B of Chapter 8 of this Act.

(d) Amendment or restatement of the articles of association of a state trust company and approval of the board and shareholders or participants must be made or obtained in accordance with provisions of the **[state]** Business Corporation Act for the amendment or restatement of articles of incorporation except as otherwise provided by this Act or rules adopted under this Act. The original and once copy of the articles of amendment or restated articles of association must be filed with the Commissioner for approval. Unless the submission presents novel or unusual questions, the Commissioner shall approve or reject the amendment or restatement not later than the 31st day after the date the Commissioner considers the submission informationally complete and accepted for filing. The Commissioner may require the submission of additional information as considered necessary to an informed decision to approve or reject any amendment or restatement or articles of association under this section.

(e) If the Commissioner thinks that the amendment or restatement conforms to law and any conditions imposed by the Commissioner, and any required filing fee has been paid, the Commissioner shall.

(1) endorse the face of the original and copy with the date of approval and the word "Approved";

(2) file the original in the Department's records; and

(3) deliver a certified copy to the amendment or restatement to the state trust company.

(f) An amendment or restatement, if approved, takes effect on the date of approval, unless the amendment or restatement provides for a different effective date.

§ 4.202. Establishing a Series of Shares or Participation Shares

(a) If the articles of association expressly give the board authority to establish series and determine the preferences, limitations, and relative rights of each series, the board may do so only on compliance with this section and any rules adopted under this chapter.

(b) A series of shares or participation shares may be established in the manner provided by the provisions of the [state] Business Corporation Act as if the state trust company were a domestic corporation, but the shares or participation shares of the series may not be issued and sold except upon compliance with this section. The state trust company shall file the original and one copy of the statement of action required by the [state] Business Corporation Act with the Commissioner. Unless the submission presents novel or unusual questions, the Commissioner shall approve or reject the series not later than the 31st day after the date the Commissioner considers the submission informationally complete and accepted for filing. The Commissioner may require the submission of additional information as considered necessary to an informed decision.

(c) If the Commissioner finds that the interests of the clients and creditors of the state trust company will not be adversely affected by the series, that the series otherwise conforms to law and any conditions imposed by the Commissioner, and that any required filing fee has been paid, the Commissioner shall:

(1) endorse the face of the original and copy of the statement with the date of approval and the word "Approved";

(2) file the original in the Department's records; and

(3) deliver a certified copy of the statement to the state trust company.

§ 4.203. Change in Outstanding Capital and Surplus

(a) A state trust company may not reduce or increase its outstanding capital through dividend, redemption, issuance of shares or participation shares, or otherwise, without the prior approval of the Commissioner, except as permitted by this section or rules adopted under this chapter.

(b) Unless otherwise restricted by rules, prior approval is not required for an increase in capital accomplished through:

(1) issuance of shares of common stock or their equivalent in participation shares

for cash;

(2) declaration and payment of pro rata share dividends as defined in the [state] Business Corporation Act; or

(3) adoption by the board of a resolution directing that all or part of undivided profits be transferred to capital.

(c) Prior approval is not required for a decrease in surplus caused by incurred losses in excess of undivided profits.

§ 4.204. Capital Notes or Debentures

(a) With the prior written approval of the Commissioner, any state trust company may, at any time, through action of its board, and without requiring action of its shareholders or participants, issue and sell its capital notes or debentures, which must be subordinate to the claims or depositories and may be subordinate to other claims, including the claims of other creditors or classes of creditors or the shareholders or participants.

(b) Capital notes or debentures may be convertible into shares or participation shares of any class or series. The issuance and sale of convertible capital notes or debentures are subject to satisfaction of preemptive rights, if any, to the extent provided by law.

(c) Without the prior written approval of the Commissioner, interest due or principal repayable on outstanding capital notes or debentures may not be paid by a state trust company when the state trust company is in hazardous condition or insolvent, as determined by the Commissioner, or to the extent that payment will cause the state trust company to be in hazardous condition or insolvent.

(d) The amount of any outstanding capital notes or debentures that meet the requirements of this section and that are subordinated to unsecured creditors of the state trust company may be included in equity capital of the state trust company for purposes of determining hazardous condition or insolvency, and for such other purposes provided by rules adopted under this Act.

SUBCHAPTER C. PRIVATE TRUST COMPANY

Section

4.301. PRIVATE TRUST COMPANY.

4.302. REQUIREMENTS TO APPLY FOR AND MAINTAIN STATUS AS A PRIVATE TRUST COMPANY.

4.303. CONVERSION TO PUBLIC TRUST COMPANY.

SUBCHAPTER C. PRIVATE TRUST COMPANY

§ 4.301. Private Trust Company

(a) A private trust company engaging in the trust business in this state shall comply with each and every provision of this Act applicable to a trust company unless expressly exempted therefrom in writing by the Commissioner pursuant to this section, by rule adopted by the Department or under a predecessor statute.

(b) A private trust company or proposed private trust company may request in writing that it be exempted from specified provisions of sections 2.105(b), 4.102(k), 4.103(b), 4.104(a) and(b), 4.107(a), 5.002, 5.101(b), (c) and (d), 5.105, and 5.201 of this Act. The Commissioner may grant the exemption in whole or in part if the Commissioner finds that the private trust company does not and will not transact business with the general public. For purposes of this section,

(1) "Transact business with the general public" means any sales, solicitations, arrangements, agreements, or transactions to provide trust or other business services, whether or not for a fee, commission, or any other type of remuneration, with any client that is not a family member or a sole proprietorship, partnership, joint venture, association, trust, estate, business trust, or other company that is not 100% owned by one or more family members. For purposes of this section;

(2) "Family member" means any individual who is related within the fourth degree of affinity or consanguinity to an individual or individuals who control a private trust company or which is controlled by one or more trusts or charitable organizations established by such individual or individuals; and

(3) All individuals who control a private trust company or establish trusts or charitable organizations controlling such private trust company must be related within the second degree of affinity or consanguinity.

(c) At the expense of the private trust company, the Commissioner may examine or investigate the private trust company in connection with an application for exemption. Unless the application presents novel or unusual questions, the Commissioner shall approve the application for exemption or set the application for hearing not later than the 61st day after the date the Commissioner considers the application complete and accepted for filing. The Commissioner may require the submission of additional information as considered necessary to an informed decision.

(d) Any exemption granted under this section may be made subject to conditions or limitations imposed by the Commissioner consistent with this Act.

(e) The Department may adopt rules defining other circumstances that do not constitute transaction of business with the public, specifying the provisions of this Act that are subject to an exemption request, and establishing procedures and requirements for obtaining, maintaining, or revoking exempt status.

§ 4.302. Requirements to Apply for and Maintain Status as a Private Trust Company

(a) APPLICATION.

(1) A private trust company requesting an exemption from the provisions of this Act pursuant to section 4.301 shall file an application with the Commissioner containing the following:

- (A) a nonrefundable application fee as set by the Department;
- (B) a detailed statement under oath showing the private trust company's assets and liabilities as of the end of the month previous to the filing of the application;
- (C) a statement under oath of the reason for requesting the exemption;
- (D) a statement under oath that the private trust company is not currently transacting business with the public and that the company will not conduct business with the public without the prior written permission of the Commissioner;
- (E) the current street mailing address and telephone number of the physical location in this state at which the private trust company will maintain its books and records, together with a statement under oath that the address given is true and correct and is not a U.S. Postal Service post office box or a private mail box, postal box, or mail drop; and
- (F) listing of the specific provisions of the Act for which the request for exemption is made.

(2) The Commissioner shall not approve a private trust company exemption unless the application is completed as required in paragraph (1) of this section.

(b) REQUIREMENTS.

(1) To maintain status as an exempt private trust company under this Act, the private trust company shall comply with the following:

- (A) An exempt private trust company shall not transact business with the public.
- (B) An exempt private trust company shall file an annual certification that it is maintaining the conditions and limitations of its exempt status. This annual certification shall be filed on a form provided by the Commissioner and be accompanied by a fee determined by the Department. The annual certification shall be filed on or before June 30 of each year. No annual certification shall be valid unless it bears an acknowledgment stamped by the Department. The Department shall have 30 days from the date of receipt to return a copy of the acknowledged annual certification to the private trust company. The burden shall be on the exempt private trust company to notify the Department of any failure to return an acknowledged copy of any annual certification within the 30-day period. The Commissioner may examine or investigate the private state trust company periodically as necessary to

verify the certification.

(C) An exempt private trust company shall comply with the principal office provisions of section 2.003 of this Act and with the address and telephone requirements of subsection (a)(1)(E) of this section.

(D) the exempt private trust company shall pay the [state] corporate franchise tax, as certified by the [state] Comptroller of _____.

(c) CHANGE OF CONTROL. Control of an exempt private trust company may not be transferred or sold with exempt status. In any change of control, the acquiring control person must comply with the provisions of this Act and the exempt status of the private trust company shall automatically terminate upon the effective date of the transfer. A separate application for exempt status must be filed if the acquiring person wishes to obtain or continue an exemption pursuant to this section.

(d) AUTHORITY TO REVOKE. The Commissioner shall have authority to revoke the exempt status of a private trust company in the following circumstances:

(1) the exempt private trust company makes a false statement under oath on any document required to be filed by the Act or by any rule promulgated by the Department; or

(2) the exempt private trust company fails to submit to an examination as required by section 2.003 of this Act; or

(3) the exempt private trust company withholds requested information from the Commissioner; or

(4) the exempt private trust company violates any provision of this section applicable to exempt private trust companies.

(e) NOTIFICATION OF REVOCATION OF EXEMPTION. If the Commissioner determines from examination or other credible evidence that an exempt private trust company has violated any of the requirements of this section, the Commissioner may by personal delivery or registered or certified mail, return receipt requested, notify the exempt private trust company in writing that the private trust company's exempt status has been revoked. The notification must state grounds for the revocation with reasonable certainty. The notice must state its effective date, which may not be before the 5th day after the date the notification is mailed or delivered. The revocation takes effect for the private trust company if the private trust company does not request a hearing in writing before the effective date. After taking effect the revocation is final and nonappealable as to that private trust company, and the private trust company shall be subject to all of the requirements and provisions of the Act applicable to non-exempt state trust companies.

(f) COMPLIANCE PERIOD. A private trust company shall have 5 calendar days after the revocation is effective to comply with the provisions of this Act from which it was formerly exempt. If,

however, the Commissioner determines, at the time of revocation, that the private trust company has been engaging in or attempting to engage in acts intended or designed to deceive or defraud the public, the Commissioner may shorten or eliminate, in the Commissioner's sole discretion, the 5 calendar days compliance period.

(g) **REMEDIES FOR FAILURE TO COMPLY.** If the private trust company does not comply with all of the provisions of this Act, including such capitalization requirements as have been determined by the Commissioner as necessary to assure the safety and soundness of the private trust company, within the prescribed time period, the Commissioner may:

(1) institute any action or remedy prescribed by this Act, or any applicable rule or regulation, or

(2) refer the private trust company to the attorney general for institution of a quo warranto proceeding to revoke the charter.

(h) **PRIVATE TRUST COMPANY UNDER PRIOR LAW.** A private trust company that currently has a valid exemption under a predecessor statute is considered exempt under this Act.

§ 4.303. Conversion to Public Trust Company

(a) A private trust company may terminate its status as a private trust company and commence transacting business with the general public. A private trust company desiring to commence transacting business with the general public shall file a notice on a form prescribed by the Commissioner, which shall set forth the name of the private trust company and an acknowledgement that any exemption granted or otherwise applicable to the private trust company pursuant to Section 4.301 hereof shall cease to apply on the effective date of such notice, furnish a copy of the resolution adopted by the board authorizing the private trust company to commence transacting business with the general public, and pay the filing fee, if any, prescribed by the Commissioner.

(b) The notificant may commence transacting business with the general public on the 31st day after the date the Commissioner receives the notice, unless the Commissioner specifies an earlier or later date.

(c) The 30 day period of review may be extended by the Commissioner on determination that the written notice raises issues that require additional information or additional time for analysis. If the period for review is extended, the notificant may commence transacting business with the public only on prior written approval by the Commissioner.

(d) The Commissioner may deny approval of the notice of the private trust company to commence transacting business with the general public if the Commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed transacting of business of the general public would be contrary to the public interest or if the Commissioner determines that the notificant will not within a reasonable period

be in compliance with any provision of this Act from which the notificant had been previously exempted pursuant to section 4.301.

CHAPTER 5. INVESTMENTS, LOANS AND DEPOSITS

SUBCHAPTER A. ACQUISITION AND OWNERSHIP OF STATE TRUST COMPANY FACILITIES AND OTHER REAL ESTATE

Section

- 5.001. INVESTMENT IN STATE TRUST COMPANY FACILITIES.
- 5.002. OTHER REAL ESTATE.

SUBCHAPTER B. INVESTMENTS

Section

- 5.101. SECURITIES.
- 5.102. TRANSACTIONS IN STATE TRUST COMPANY SHARES OR PARTICIPATION SHARES.
- 5.103. STATE TRUST COMPANY SUBSIDIARIES.
- 5.104. MUTUAL FUNDS.
- 5.105. ENGAGING IN COMMERCE PROHIBITED.

SUBCHAPTER C. LOANS

Section

- 5.201. LENDING LIMITS.
- 5.202. LEASE FINANCING TRANSACTIONS.

SUBCHAPTER D. TRUST DEPOSITS

Section

- 5.301. TRUST DEPOSITS.
- 5.302. COMMON INVESTMENT FUNDS.

SUBCHAPTER E. LIABILITIES AND PLEDGE OF ASSETS

Section

- 5.401. BORROWING LIMIT.
- 5.402. PLEDGE OF ASSETS.

CHAPTER 5. INVESTMENTS, LOANS AND DEPOSITS

SUBCHAPTER A. ACQUISITION AND OWNERSHIP OF STATE TRUST COMPANY FACILITIES AND OTHER REAL ESTATE

§ 5.001. Investment in State Trust Company Facilities

- (a) In this subchapter, "state trust company facility" means real estate, including an

improvement, owned, or leased to the extent the lease or the leasehold improvements are capitalized, by a state trust company for the purpose of:

(1) providing space for state trust company employees to perform their duties and space for parking by state trust company employees and customers;

(2) conducting trust business, including meeting the reasonable needs and convenience of the state trust company's customers, computer operations, document and other item processing, maintenance and record retention and storage;

(3) holding, improving, and occupying as an incident to future expansion of the state trust company's facilities; or

(4) conducting another activity authorized by rules adopted under this Act.

(b) Without the prior written approval of the Commissioner, a state trust company may not directly or indirectly invest an amount in excess of its restricted capital in state trust company facilities, furniture, fixtures, and equipment. Except as otherwise provided by rules adopted under this Act, in computing this limitation a state trust company:

(1) shall include:

(A) its direct investment in state trust company facilities;

(B) any 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 subsection (a) of this section;

(C) any 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) of this subdivision; and

(2) may exclude an amount included under subdivisions (1)(B)-(D) of this subsection 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) Real estate acquired under subsection (a)(3) of this section and not improved and occupied by the state trust company ceases to be a state trust company facility on the third anniversary of the date of its acquisition, unless the Commissioner on application grants written approval to further delay in the improvement and occupation of the property by the state trust company.

(d) A state trust company shall comply with generally accepted accounting principles, consistently applied, in accounting for its investment in and depreciation of state trust company facilities, furniture, fixtures, and equipment.

§ 5.002. Other Real Estate

(a) A state trust company may not acquire real estate except:

(1) as permitted by section 5.001 of this Act or as otherwise provided by this Act, including rules adopted under this Act;

(2) if necessary to avoid or minimize a loss on a loan or investment previously made in good faith; or

(3) with the prior written approval of the Commissioner.

(b) To the extent reasonably necessary to avoid or minimize loss on real estate acquired as permitted by subsection (a) of this section, a state trust company may exchange real estate for other real estate or personal property, invest additional funds in or improve real estate acquired under this subsection or subsection (a) of this section, or acquire additional real estate.

(c) A state trust company shall dispose of any real estate subject to subsection (a)(1) and (2) of this section not later than:

(1) the fifth anniversary of the date:

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

(B) it ceases to be used as a state trust company facility; or

(2) the third anniversary of the date it ceases to be a state trust company facility as provided by section 5.001(c) of this Act.

(d) The Commissioner on application may grant one or more extensions of time for disposing of real estate if the Commissioner determines that:

(1) the state trust company has made a good faith effort to dispose of the real estate; or

- (2) disposal of the real estate would be detrimental to the state trust company.

SUBCHAPTER B. STATE TRUST COMPANY INVESTMENTS

§ 5.101. Securities

(a) A state trust company may invest its corporate funds in any type or character of equity or investment securities subject to the limitations provided by this section.

(b) Unless the Commissioner approves maintenance of a lesser amount in writing, a state trust company must invest and maintain an amount equal to at least 40 percent of the state trust company's capital under section 4.107 of this Act in unencumbered cash, cash equivalents, and readily marketable securities.

(c) Subject to subsection (d) of this section, the total investment in equity and investment securities of any one issuer, obligor, or maker, held by the state trust company for its own account, may not exceed an amount equal to 15 percent of the state trust company's capital. The Commissioner may authorize investments in excess of this limitation on written application if the Commissioner concludes that:

- (1) the excess investment is not prohibited by other applicable law; and
- (2) the safety and soundness of the requesting state trust company is not adversely affected.

(d) Notwithstanding subsection (c) of this section, a state trust company may purchase for its own account, without limitation and subject only to the exercise of prudent judgment:

- (1) bonds and other legally created general obligations of a state, an agency or political subdivision of a state, the United States, or an agency or instrumentality of the United States;
- (2) An investment security that this state, an agency or political subdivision of this state, the United States, or an agency or instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee;
- (3) securities that are offered and sold under 15 U.S.C. Sec. 77d(5);
- (4) mortgage related securities as defined in 15 U.S.C. Sec. 78c(a), except that notwithstanding section 347 of the Riegle Community Development and Regulatory Improvement Act of 1994, a note or obligation that is secured by a first lien on one or more parcels of real estate on which is located one or more commercial structures is subject to the limitations of subsection (c) of this section;
- (5) investment securities issued or guaranteed by the Federal Home Loan Mortgage

Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Agricultural Mortgage Association, or the Federal Farm Credit Banks Funding Corporation;

(6) investment securities issued or guaranteed by the North American Development Bank; or

(7) securities issued by a Federal Home Loan Bank.

(e) Notwithstanding 15 U.S.C. Sec. 77r-1(c), subsection (c) of this section applies to investments in small business related securities as defined by 15 U.S.C. Sec. 78c(a).

(f) The Commissioner may adopt rules to establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of investment, or limit or expand investment authority for state trust companies for particular classes or categories of securities or other property.

§ 5.102. Transactions in State Trust Company Shares or Participation Shares

(a) A state trust company may acquire its own shares or participation shares if:

(1) the amount of its undivided profits is sufficient to fully absorb the acquisition of the shares or participation shares under regulatory accounting principles; or

(2) the state trust company obtains the prior written approval of the Commissioner.

(b) A state trust company may acquire a lien upon its own shares or participation shares if:

(1) the aggregate amount of indebtedness so secured is less than the amount of the state trust company's undivided profits; or

(2) the state trust company obtains the prior written approval of the Commissioner.

(c) Except with the prior written approval of the Commissioner:

(1) the state trust company may not hold its own shares or participation shares as treasury stock for more than two years; and

(2) a lien acquired under this section may not by its original terms extend for more than two years.

§ 5.103. Subsidiaries

(a) Except as otherwise provided by this chapter or rules adopted under this chapter, a

state trust company may acquire or establish a subsidiary to conduct any activity that may lawfully be conducted through the form of organization chosen for the subsidiary.

(b) A state trust company may not invest more than an amount equal to 15 percent of its capital in a single subsidiary and may not invest an amount in excess of its restricted capital in all subsidiaries. The amount of a state trust company's investment in a subsidiary is the total amount of the state trust company's investment in equity or investment securities issued by its subsidiary and any loans and extensions of credit from the state trust company to its subsidiary. The Commissioner may authorize investments in excess of these limitations on written application if the Commissioner concludes that:

- (1) the excess investment is not prohibited by other applicable law; and
- (2) the safety and soundness of the requesting state trust company is not adversely affected.

(c) A state trust company that intends to acquire, establish, or perform new activities through a subsidiary shall submit a letter to the Commissioner describing in detail the proposed activities of the subsidiary.

(d) The state trust company may acquire or establish a subsidiary or begin performing new activities in an existing subsidiary on the 31st day after the date the Commissioner receives the state trust company's letter, unless the Commissioner specifies an earlier or later date. The Commissioner may extend the 30-day period of review on a determination that the state trust company's letter raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust company may acquire or establish the subsidiary, or perform new activities in an existing subsidiary, only on prior written approval of the Commissioner.

(e) A subsidiary of a state trust company is subject to regulation by the Commissioner to the extent provided by this chapter or rules adopted under this chapter. In the absence of limiting rules, the Commissioner may regulate a subsidiary as if it were a state trust company.

§ 5.104. Mutual Funds

(a) A state trust company may invest for its own account in equity securities of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) and the Securities Act of 1933 (15 U.S.C. Sec. 77a et seq.) if the portfolio of the investment company consists wholly of investments in which the state trust company could invest directly for its own account.

(b) If the portfolio of an investment company described in subsection (a) of this section consists wholly of investments in which the state trust company could invest directly without limitation under section 5.101(d) of this Act, the state trust company may invest in the investment company without limitation.

(c) If the portfolio of an investment company described in subsection (a) of this section contains any investment that is subject to the limits of section 5.101(c) of this Act, the state trust company may invest in the investment company not more than an amount equal to 15 percent of the state trust company's capital. This provision does not apply to a money market fund.

(d) In evaluating investment limits under this chapter of this Act, a state trust company may not be required to combine:

(1) the state trust company's pro rata share of the securities of an issuer in the portfolio of an investment company with the state trust company's pro rata share of the securities of that issuer held by another investment company in which the state trust company has invested; or

(2) the state trust company's own direct investment in the securities of an issuer with the state trust company's pro rata share of the securities of that issuer held by each investment company in which the state trust company has invested under this section.

§ 5.105. Engaging in Commerce Prohibited

Except as otherwise provided by this Act or rules adopted under this Act, a state trust company may not invest its funds in trade or commerce by buying, selling, or otherwise dealing in goods or by owning or operating a business not part of the state trust business, except as necessary to fulfill a fiduciary obligation to a client.

SUBCHAPTER C. LOANS

§ 5.201. Lending Limits

(a) A state trust company's total outstanding loans and extensions of credit to a person other than an insider may not exceed an amount equal to 15 percent of the state trust company's capital.

(b) The aggregate loans and extensions of credit outstanding at any time to insiders of the state trust company may not exceed an amount equal to 15 percent of the state trust company's capital. All covered transactions between an insider and a state trust company must be engaged in only on terms and under circumstances, including credit standards, that are substantially the same as those for comparable transactions with a noninsider.

(c) The Commissioner may adopt rules to administer and carry out this section, including rules to establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of loans or extensions of credit, and establish collective lending and investment limits.

(d) The Commissioner may determine whether a loan or extension of credit putatively made to a person will be attributed to another person for purposes of this section.

(e) A state trust company may not lend trust deposits, except that a trustee may make a loan to a beneficiary of the trust if the loan is expressly authorized or directed by the instrument or transaction establishing the trust.

(f) An officer, director, manager, managing participant, or employee of a state trust company who approves or participates in the approval of a loan with actual knowledge that the loan violates this section is jointly and severally liable to the state trust company for the lesser of the amount by which the loan exceeded applicable lending limits or the state trust company's actual loss and remains liable for that amount until the loan and all prior indebtedness of the borrower to the state trust company has been fully repaid. The state trust company may initiate a proceeding to collect an amount due under this subsection at any time before the date the borrower defaults on the subject loan or any prior indebtedness or before the fourth anniversary of that date. A person that is liable for and pays amounts to the state trust company under this subsection is entitled to an assignment of the state trust company's claim against the borrower to the extent of the payments. For purposes of this subsection, an officer, director, manager, managing participant, or employee of a state trust company is presumed to know the amount of the state trust company's lending limit under subsection (a) of this section and the amount of the borrower's aggregate outstanding indebtedness to the state trust company immediately before a new loan or extension of credit to that borrower.

§ 5.202. Lease Financing Transactions

(a) Subject to rules adopted under this Act, a state trust company may become the owner and lessor of tangible personal property for lease financing transactions on a net lease basis on the specific request and for the use of a client. Without the written approval of the Commissioner to continue holding property acquired for leasing purposes under this subsection, the state trust company may not hold the property more than six months after the date of expiration of the original or any extended or renewed lease period agreed to by the client for whom the property was acquired or by a subsequent lessee.

(b) Rental payments received by the trust company in a lease financing transaction under this section are considered to be rent and not interest or compensation for the use, forbearance, or detention of money. However, a lease financing transaction is considered to be a loan or extension of credit for purposes of section 5.201 of this Act.

SUBCHAPTER D. TRUST DEPOSITS

§ 5.301. Trust Deposits

(a) A state trust company may deposit trust funds with itself as an investment if authorized by the settlor or the beneficiary provided:

(1) it maintains as security for the deposits a separate fund of securities, legal for trust investments, under control of a federal reserve bank or a clearing corporation, as defined by [cite

applicable provision of law], either in this state or elsewhere;

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

(3) the separate fund is designated as such; and

(4) the separate fund is maintained under the control of another trust institution, bank or government agency.

(b) A state trust company may make periodic withdrawals from or additions to the securities fund required by subsection (a) of this section as long as the required value is maintained. Income from the securities in the fund belongs to the state trust company.

(c) Security for a deposit under this section is not required for a deposit under subsection (a) of this section to the extent the deposit is insured by the Federal Deposit Insurance Corporation or its successor.

§ 5.302. Common Investment Funds

(a) A state trust company may establish common trust funds to provide investment to itself as a fiduciary.

(b) The Commissioner may adopt rules to administer and carry out this section, including but not limited to rules to establish investment and participation limitations, disclosure of fees, audit requirements, limit or expand investment authority for particular classes or categories of securities or other property, advertising, exemptions, and other requirements that may be necessary to carry out this section.

SUBCHAPTER E. LIABILITIES AND PLEDGE OF ASSETS

§ 5.401. Borrowing Limit

Except with the prior written approval of the Commissioner, a state trust company may not have liabilities outstanding exceeding an amount equal to five times its capital.

§ 5.402. Pledge of Assets

A state trust company may not pledge or create a lien on any of its assets except to secure the repayment of money borrowed or as specifically authorized or required by section 5.301 of this Act, **[any other applicable provision]**, or by rules adopted under this chapter. An act, deed, conveyance, pledge, or contract in violation of this section is void.

APPENDIX TWO

SUPPLEMENTAL CHAPTERS FOR CREATING OR UPDATING A COMPREHENSIVE TRUST COMPANY ACT

STATE TRUST COMPANY ACT [PARTIAL]

CHAPTER 6. ADDITIONAL DEFINITIONS; OWNERSHIP; GOVERNANCE; MERGERS

SUBCHAPTER A. ADDITIONAL DEFINITIONS

Section

6.001. ADDITIONAL DEFINITIONS.

SUBCHAPTER B. TRANSFER OF OWNERSHIP INTEREST IN STATE TRUST COMPANY

Section

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CHAPTER 6. ADDITIONAL DEFINITIONS; OWNERSHIP; GOVERNANCE; MERGERS

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* *DRAFTING NOTE: A complete Trust Company Act requires in addition Chapters 1, 2, 4 and 5 of this Project.*

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CHAPTER 6. ADDITIONAL DEFINITIONS; OWNERSHIP; GOVERNANCE; MERGERS

Subchapter A. Additional Definitions

§ 6.001. Additional Definitions.

- (a) In this Act:
 - (1) "Capital" means:
 - (A) the sum of:
 - (i) the par value of all shares or participation shares of the state trust company having a par value that have been issued;
 - (ii) the consideration fixed by the board in the manner provided by the [state] Business Corporation Act for all shares or participation shares of the state trust company without par value that have been issued, except a part of that consideration that:
 - a. has been actually received;
 - b. is less than all of that consideration; and

- c. the board, by resolution adopted not later than the 60th day after the date of issuance of those shares, has allocated to surplus with the prior approval of the Commissioner; and
- (iii) an amount not included in subparagraphs (i) and (ii) that has been transferred to capital of the state trust company, on the payment of a share dividend or on adoption by the board of a resolution directing that all or part of surplus be transferred to capital, minus each reduction made as permitted by law; less

(B) all amounts otherwise included in Paragraphs (A)(i) and (ii) of this subdivision that are attributable to the issuance of securities by the state trust company and that the Commissioner determines, after notice and an opportunity for hearing, should be classified as debt rather than equity securities.

(2) "Conservator" means the Commissioner or an agent of the Commissioner exercising the powers and duties provided by subchapter B, Chapter 7, of this Act.

(3) "Control" means:

(A) the ownership of or ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than 25 percent of the outstanding shares of a class of voting securities of a state trust company or other company;

(B) the ability to control the election of a majority of the board of a state trust company or other company;

(C) the power to exercise, directly or indirectly, a controlling influence over the management or policies of the state trust company or other company as determined by the Commissioner after notice and an opportunity for hearing; or

(D) the conditioning of the transfer of more than 25 percent of the outstanding shares or participation shares of a class of voting securities of a state trust company or other company on the transfer of more than 25 percent of the outstanding shares of a class of voting securities of another state trust company or other company.

(4) "Equity capital" means the amount by which the total assets of a state trust company exceed the total liabilities of the state trust company.

(5) "Equity security" means:

(A) stock, other than adjustable rate preferred stock and money market (auction rate) preferred stock;

(B) a certificate of interest or participation in a profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share or participation share, investment contract, voting-trust certificate, or partnership interest;

(C) a security immediately convertible at the option of the holder without payment of significant additional consideration into a security described by this subdivision;

(D) a security carrying a warrant or right to subscribe to or purchase a security described by this subdivision; and

(E) a certificate of interest or participation in, temporary or interim certificate for, or receipt for a security described by this subdivision that evidences an existing or contingent equity ownership interest.

(6) "Hazardous condition" with respect to a trust company means:

(A) a refusal by the trust company to permit examination of its books, papers, accounts, records, or affairs by the Commissioner;

(B) violation by a trust company of a condition of its chartering or an agreement entered into between the trust company and the Commissioner or the Department; or

(C) a circumstance or condition in which an unreasonable risk of loss is threatened to clients or creditors of a trust company, excluding risk of loss to a client that arises as a result of the client's decisions or actions, but including a circumstance or condition in which a trust company:

(i) is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even though the book or fair market value of its assets may exceed its liabilities;

(ii) has equity capital less than the amount of restricted capital the trust company is required to maintain under section 4.107, or the adequacy of its equity capital is threatened, as determined under regulatory accounting principles;

(iii) has concentrated an excessive or unreasonable portion of its assets in a particular type or character of investment;

(iv) violates or refuses to comply with this Act, another statute or regulation applicable to trust companies, or any final and enforceable order of the Commissioner;

(v) is in a condition that renders the continuation of a particular business practice hazardous to its clients and creditors; or

(vi) conducts business in an unsafe or unsound manner, which includes, but is not limited to conducting business with,

- a. inexperienced or inattentive management;
- b. potentially dangerous operating practices;
- c. infrequent or inadequate audits;
- d. administration of assets that is notably deficient in relation to the volume and character or responsibility for asset holdings;
- e. failure to adhere to sound administrative practices;
- f. frequent occurrences of violations of laws, regulations or terms of the governing instruments; or,
- g. engaging in self-dealing or evidencing a notable degree of potential or actual conflicts of interest.

(7) "Insider" means:

(A) each director, manager, managing participant, officer, and principal shareholder or participant of the trust company;

(B) any company controlled by a person described by Paragraph (A) of this subdivision; or

(C) any person who participates or has authority to participate, other than in the capacity of a director, in major policymaking functions of the state trust company, whether or not the person has an official title or the officer is serving without salary or compensation.

(8) "Insolvent" means a circumstance or condition in which a state trust company:

(A) is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities;

(B) has equity capital less than \$500,000, as determined under regulatory accounting principles;

(C) fails to maintain deposit insurance with the Federal Deposit Insurance Corporation or its successor if the Commissioner determines that deposit insurance is necessary for the safe and sound operation of the state trust company, or maintains adequate security for its deposits in accordance with section 5.301 of this Act.

(D) sells or attempts to sell substantially all of its assets or merges or attempts to merge substantially all of its assets or business with another entity other than as provided by chapter 3 of this Act; or

(E) attempts to dissolve or liquidate other than as provided by chapter 8, subchapter A, of this Act.

(9) "Investment security" means a marketable obligation evidencing indebtedness of

a person in the form of a bond, note, debenture, or other debt instrument not otherwise classified as a loan or extension of credit.

(10) "Limited liability trust company" means an entity organized under the Limited Liability Company Act of this state that is chartered as a trust company under this Act.

(11) "Loans and extensions of credit" means direct or indirect advances of funds by a state trust company to a person that are conditioned on the obligation of the person to repay the funds or that are repayable from specific property pledged by or on behalf of the person.

(12) "Manager" means a person elected to the board of a limited liability trust company.

(13) "Officer" means the presiding officer of the board, the principal executive officer, or another officer appointed by the board of a state trust company or other company, or a person or group of persons acting in a comparable capacity for the state trust company or other company.

(14) "Operating subsidiary" means a company for which a state trust company has the ownership, ability, or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than 50 percent of the outstanding shares of each class of voting securities or its equivalent of the company.

(15) "Participant" means an owner of a participation share in a limited liability trust company.

(16) "Participation shares" means the units into which the proprietary interests of a limited liability trust company are divided or subdivided by means of classes, series, relative rights, or preferences.

(17) "Principal shareholder" means a person who owns or has the ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, 10 percent or more of the outstanding shares or participation shares of any class of voting securities of a state trust company or other company.

(18) "Private trust company" means a trust company that does not engage in a trust business with the general public.

(19) "Shareholder" means an owner of a share in a state trust company.

(20) "Shares" means the units into which the proprietary interests of a state trust company are divided or subdivided by means of classes, series, relative rights, or preferences.

(21) "Subsidiary" means a company that is controlled by another person. The term

includes a subsidiary of a subsidiary.

(22) "Surplus" means the amount by which the assets of a state trust company exceeds its liabilities, capital, and undivided profits.

(23) "Trust deposits" means the client funds held by a state trust company and authorized to be deposited with itself pending investment, distribution, or payment of debts on behalf of the client.

(24) "Undivided profits" means the part of equity capital of a state trust company equal to the balance of its net profits, income, gains, and losses since the date of its formation, minus subsequent distributions to shareholders or participants and transfers to surplus or capital under share dividends or appropriate board resolutions. The term includes amounts allocated to undivided profits as a result of a merger.

(25) "Voting security" means a share, participation share, or other evidence of proprietary interest in a state trust company or other company that has as an attribute the right to vote or participate in the election of the board of the state trust company or other company, regardless of whether the right is limited to the election of fewer than all of the board members. The term includes a security that is convertible or exchangeable into a voting security and a nonvoting participation share of a managing participant.

(b) The definitions shall be liberally construed to accomplish the purposes of the Act. Additional definitions applicable to this Act are contained in section 1.002. The Department by rule may adopt other definitions to accomplish the purposes of this Act.

SUBCHAPTER B. TRANSFER OF OWNERSHIP INTEREST IN STATE TRUST COMPANY

§ 6.101. Acquisition of Control

(a) Except as expressly otherwise permitted, a person may not without the prior written approval of the banking Commissioner directly or indirectly acquire control of a state trust company through a change in a legal or beneficial interest in voting securities of a state trust company or a corporation or other entity owning voting securities of a state trust company.

(b) This subchapter does not prohibit a person from negotiating to acquire, but not acquiring, control of a state trust company or a person that controls a state trust company.

(c) This section does not apply to:

(1) the acquisition of securities in connection with the exercise of a security interest or otherwise in full or partial satisfaction of a debt previously contracted for in good faith if the acquiring person files written notice of acquisition with the banking Commissioner before the person votes the

securities acquired;

(2) the acquisition of voting securities in any class or series by a controlling person who has previously complied with and received approval under this subchapter or who was identified as a controlling person in a prior application filed with and approved by the banking Commissioner;

(3) an acquisition or transfer by operation of law, will, or intestate succession if the acquiring person files written notice of acquisition with the banking Commissioner before the person votes the securities acquired;

(4) a transaction exempted by the banking Commissioner by rule or order because the transaction is not within the purposes of this subchapter or the regulation of which is not necessary or appropriate to achieve the objectives of this subchapter.

§ 6.102. Application Regarding Acquisition of Control

(a) The proposed transferee seeking approval to acquire control of a state trust company or a person that controls a state trust company must file with the banking Commissioner:

(1) an application in the form prescribed by the banking Commissioner;

(2) the filing fee required by statute or rule;

(3) all information required by rule or that the banking Commissioner requires in a particular application as necessary to an informed decision to approve or reject the proposed acquisition.

(b) If the proposed transferee includes any group of individuals or entities acting in concert, the information required by the banking Commissioner may be required of each member of the group.

(c) Information obtained by the banking Commissioner under this section is confidential and may not be disclosed by the banking Commissioner or any employee of the Department except as provided by subchapter B, Chapter 2.

(d) If the proposed transferee is not a [state] resident, a [state] corporation, or an out-of-state corporation qualified to do business in this state, a written consent to service of process on a resident of this state in any action or suit arising out of or connected with the proposed acquisition.

(e) The proposed transferee must publish notice of the application, its date of filing, and the identity of each participant, in the form specified by the banking Commissioner, in a newspaper of general circulation in the county where the state trust company's home office is located, promptly after the bank Commissioner accepts the application as complete. Publication of notice of an application filed in contemplation of a public tender offer subject to the requirements of 15 U.S.C. Section 78n(d)(1) may be deferred for not more than 34 days after the date the application is filed if:

(1) the proposed transferee requests confidential treatment and represents that a public announcement of the tender offer and the filing of appropriate forms with the Securities and Exchange Commission or the appropriate federal banking agency, as applicable, will occur within the period of deferral; and

(2) the banking Commissioner determines that the public interest will not be harmed by the requested confidential treatment.

(f) The banking Commissioner may waive the requirement that a notice be published or permit delayed publication on a determination that waiver or delay is in the public interest.

§ 6.103. Hearing and Decision on Acquisition of Control

(a) Not later than the 60th day after the date the notice is published, the banking Commissioner shall approve the application or set the application for hearing. If the banking Commissioner sets a hearing, the banking Commissioner shall conduct a hearing and one or more prehearing conferences and opportunities for discovery as the banking Commissioner considers advisable and consistent with governing statutes and rules. A hearing held under this section is confidential and closed to the public.

(b) Based on the record, the banking Commissioner may issue an order denying an application if:

(1) the acquisition would substantially lessen competition, be in restraint of trade, result in a monopoly, or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the trust industry in any part of this state, unless:

(A) the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served; and

(B) the proposed acquisition is not in violation of law of this state or the United States;

(2) the financial condition of the proposed transferee, or any member of a group composing the proposed transferee, might jeopardize the financial stability of the state trust company being acquired;

(3) plans or proposals to operate, liquidate, or sell the state trust company or its assets are not in the best interests of the state trust company;

(4) the experience, ability, standing, competence, trustworthiness, and integrity of the proposed transferee, or any member of a group comprising the proposed transferee, are insufficient to justify a belief that the state trust company will be free from improper or unlawful influence or

interference with respect to the state trust company's operation in compliance with law;

(5) the state trust company will not be solvent, have adequate capitalization, or be in compliance with the laws of this state after the acquisition;

(6) the proposed transferee has failed to furnish all information pertinent to the application reasonably required by the banking Commissioner; or

(7) the proposed transferee is not acting in good faith.

(c) If an application filed under this section is approved by the banking Commissioner, the transaction may be consummated. Any written commitment from the proposed transferee offered to and accepted by the banking Commissioner as a condition that the application will be approved is enforceable against the state trust company and the transferee and is considered for all purposes an agreement under this Act.

§ 6.104. Appeal from Adverse Decision

(a) If a hearing has been held, the banking Commissioner has entered an order denying the application, and the order has become final, the proposed transferee may appeal the final order by filing a petition for judicial review with a court of competent jurisdiction.

(b) The filing of an appeal under this section does not stay the order of the banking Commissioner.

§ 6.105. Objection to Other Transfer

This subchapter may not be construed to prevent the banking Commissioner from investigating, commenting on, or seeking to enjoin or set aside a transfer of voting securities that evidence a direct or indirect interest in a state trust company, regardless of whether the transfer is included within this subchapter, if the banking Commissioner considers the transfer to be against the public interest.

§ 6.106. Civil Enforcement; Criminal Penalties

(a) The banking Commissioner may bring any appropriate civil action against any person who the banking Commissioner believes has committed or is about to commit a violation of this subchapter or a rule or order of the banking Commissioner pertaining to this subchapter.

(b) A person who knowingly fails or refuses to file the application required by section 6.102 of this Act commits an offense. An offense under this subsection is a Class A misdemeanor.

SUBCHAPTER C. BOARD AND OFFICERS

§ 6.201. Voting Securities Held by State Trust Company

(a) Voting securities of a state trust company held by the state trust company in a fiduciary capacity under a will or trust, whether registered in its own name or in the name of its nominee, may not be voted in the election of directors or managers or on a matter affecting the compensation of directors, managers, officers, or employees of the state trust company in that capacity, unless :

(1) under the terms of the will or trust, the manner in which the voting securities are to be voted may be determined by a donor or beneficiary of the will or trust and the donor or beneficiary actually makes the determination in the matter at issue;

(2) the terms of the will or trust expressly direct the manner in which the securities must be voted to the extent that no discretion is vested in the state trust company as fiduciary; or

(3) the securities are voted solely by a cofiduciary that is not an affiliate of the state trust company, as if the cofiduciary were the sole fiduciary.

(b) Voting securities of a state trust company that cannot be voted under this section are considered to be authorized but unissued for purposes of determining the procedures for and results of the affected vote.

§ 6.202. Bylaws

(a) Each state trust company shall adopt bylaws and may amend its bylaws from time to time for the purposes and in accordance with the procedures set forth in the [state] Business Corporation Act.

(b) A limited liability trust company in which management is retained by the participants is not required to adopt bylaws if provisions required by law to be contained in the bylaws are contained in the articles of association or the participation agreement. If a limited liability trust company has adopted bylaws which designate each full liability participant, the limited liability trust company shall file with the banking Commissioner a copy of the bylaws. Solely that portion of the bylaws designating each full liability participant shall be a public record.

§ 6.203. Board of Directors, Managers, or Managing Participants

(a) The board of a state trust company must consist of not fewer than five or more than 25 directors, managers, or managing participants, the majority of whom must be residents of this state. Except for a limited liability trust company on in which management has been retained by its participants, the principal executive officer of the state trust company is a member of the board. The principal executive officer acting in the capacity of board member is the board's presiding officer unless the board elects a different presiding officer to perform the duties as designated by the board.

(b) Unless the banking Commissioner consents otherwise in writing, a person may not serve as director, manager, or managing participant of a state trust company if:

(1) the state trust company incurs an unreimbursed loss attributable to a charged-off

obligation of or holds a judgment against the person or an entity that was controlled by the person at the time of funding and at the time of default on the loan that gave rise to the judgment or charged-off obligation;

(2) the person has been convicted of a felony; or,

(3) the person has violated a provision of **[state law citation]**, relating to loan of trust funds and purchase or sale of trust property by the trustee, and the violation has not been corrected.

(c) If a state trust company other than a limited liability trust company operated by managing participants does not elect directors or managers before the 61st day after the date of its regular annual meeting, the banking Commissioner may appoint a conservator under Chapter 6 to operate the state trust company and elect directors or managers, as appropriate. If the conservator is unable to locate or elect persons willing and able to serve as directors or managers, the banking Commissioner may close the state trust company for liquidation.

(d) A vacancy on the board that reduces the number of directors, managers, or managing participants to fewer than five must be filled not later than the 30th day after the date the vacancy occurs. A limited liability trust company with fewer than five managing participants must add one or more new participants or elect a board of managers of not fewer than five persons to resolve the vacancy. After 30 days after the date the vacancy occurs, the banking Commissioner may appoint a conservator under Chapter 6 to operate the state trust company and elect a board of not fewer than five persons to resolve the vacancy. If the conservator is unable to locate or elect five persons willing and able to serve as directors or managers, the banking Commissioner may close the state trust company for liquidation.

(e) Before each term to which a person is elected to serve as a director or manager of a state trust company, or annually for a person who is a managing participant, the person shall submit an affidavit for filing in the minutes of the state trust company stating that the person, to the extent applicable:

(1) accepts the position and is not disqualified from serving in the position;

(2) will not violate or knowingly permit an officer, director, manager, managing participant, or employee of the state trust company to violate any law applicable to the conduct of business of the state trust company; and

(3) will diligently perform the duties of the position.

(f) An advisory director or manager is not considered a director if the advisory director or 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 and is not

counted for purposes of determining a quorum of the board or committee; and

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

§ 6.204. Required Board Meetings

The board of a state trust company shall hold at least one regular meeting each quarter. 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 state trust company. The board may designate committees from among its members to perform these duties and approve or disapprove the committees' reports at each regular meeting. All actions of the board must be recorded in its minutes.

§ 6.205. Officers

(a) The board shall annually appoint the officers of the state trust company, who serve at the pleasure of the board. The state trust company must have a principal executive officer primarily responsible for the execution of board policies and operation of the state trust company and an officer responsible for the maintenance and storage of all corporate books and records of the state trust company and for required attestation of signatures. These positions may not be held by the same person. The board may appoint other officers of the state trust company as the board considers necessary.

(b) Unless expressly authorized by a resolution of the board recorded in its minutes, an officer or employee may not create or dispose of a state trust company asset or create or incur a liability on behalf of the state trust company.

§ 6.206. Certain Criminal Offenses

(a) An officer, director, manager, managing participant, employee, shareholder, or participant of a state trust company commits an offense if the person knowingly:

(1) conceals information or a fact, or removes, destroys, or conceals a book or record of the state trust company for the purpose of concealing information or a fact from the banking Commissioner or an agent of the banking Commissioner; or

(2) for the purpose of concealing, removes or destroys any book or record of the state trust company that is material to a pending or anticipated legal or administrative proceeding.

(b) An officer, director, manager, managing participant, or employee of a state trust company commits an offense if the person knowingly makes a false entry in the books or records or in any report or statement of the state trust company.

(c) An offense under this section is a felony of the third degree.

§ 6.207. Transactions with Management and Affiliates

(a) Without the prior approval of a disinterested majority of the board recorded in the minutes, or if a disinterested majority cannot be obtained the prior written approval of the banking Commissioner, a state trust company may not directly or indirectly;

(1) sell or lease an asset of the state trust company to an officer, director, manager, managing participant, or principal shareholder or participant of the state trust company or an affiliate of the state trust company; or

(2) purchase or lease an asset in which an officer, director, manager, managing participant, or principal shareholder or participant of the state trust company or an affiliate of the state trust company has an interest; or

(3) subject to section 5.201 of this Act, extend credit to an officer, director, manager, managing participant, or principal shareholder or participant of the state trust company or an affiliate of the state trust company.

(b) Notwithstanding subsection (a) of this section, a lease transaction described in subsection (a)(2) of this section involving real property may not be consummated, renewed, or extended without the prior written approval of the banking Commissioner. For purposes of this subsection only, an affiliate of the state trust company does not include a subsidiary of the state trust company.

(c) Subject to section 5.201 of this Act, a state trust company may not directly or indirectly extend credit to an employee, officer, director, manager, managing participant, or principal shareholder or participant of the state trust company or an affiliate of the state trust company, unless the extension of credit:

(1) is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the state trust company with persons who are not employees, officers, directors, managers, managing participants, or principal shareholders, participants or affiliates of the state trust company; and

(2) does not involve more than the normal risk of repayment or present other unfavorable features; and

(3) the state trust company follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the state trust company with persons who are not employees, officers, directors, managers, managing participants, or principal shareholders, participants or affiliates of the state trust company.

(d) An officer, director, manager, or managing participant of the state trust company who knowingly participates in or permits a violation of this section commits a felony of the third degree.

(e) The Department may adopt rules to administer and carry out this section, including rules to

establish limits, requirements, or exemptions other than those specified by this section for particular categories of transactions.

§ 6.208. Fiduciary Responsibility

The board of a state trust company is responsible for the proper exercise of fiduciary powers by the state trust company and each matter pertinent to the exercise of fiduciary powers, including:

- (1) the determination of policies;
- (2) the investment and disposition of property held in a fiduciary capacity; and
- (3) the direction and review of the actions of each officer, employee, and committee used by the state trust company in the exercise of its fiduciary powers.

§ 6.209. Recordkeeping

A state trust company shall keep its fiduciary records separate and distinct from other records of the state trust company. The fiduciary records must contain all material information relative to each account as appropriate under the circumstances.

§ 6.210. Bonding Requirements

(a) The board of a state trust company shall require protection and indemnity for clients in reasonable amounts established by rules adopted under this chapter, against dishonesty, fraud, defalcation, forgery, theft, and other similar insurable losses, with corporate insurance or surety companies:

- (1) authorized to do business in this state; or
- (2) acceptable to the banking Commissioner and otherwise lawfully permitted to issue the coverage against those losses in this state.

(b) Except as otherwise provided by rule, coverage required under subsection (a) of this section must include each director, manager, managing participant, officer, and employee of the state trust company without regard to whether the person receives salary or other compensation.

(c) A state trust company may apply to the banking Commissioner for permission to eliminate the bonding requirement of this section for a particular individual. The banking Commissioner shall approve the application if the banking Commissioner finds that the bonding requirement is unnecessary or burdensome. Unless the application presents novel or unusual questions, the banking Commissioner shall approve the application or set the application for hearing not later than the 61st day after the date the banking Commissioner considers the application complete and accepted for filing.

§ 6.211. Reports of Apparent Crime

A trust company that is the victim of a robbery, has a shortage of corporate or fiduciary funds in excess of \$5,000, or is the victim of an apparent or suspected misapplication of its corporate or fiduciary funds or property in any amount by a director, manager, managing participant, officer, or employee shall report such robbery, shortages or apparent or suspected misapplication to the banking Commissioner within 48 hours after the time it is discovered. The initial report may be oral if the report is promptly confirmed in writing. The trust company or a director, manager, managing participant, officer, employee, or agent is not subject to liability for defamation or another charge resulting from information supplied in the report.

SUBCHAPTER D. SPECIAL PROVISIONS FOR LIMITED LIABILITY TRUST COMPANIES

§ 6.301. Filing of Notice of Full Liability

(a) A limited liability trust company shall file with the banking Commissioner a copy of any participation agreement by which a participant of the limited liability trust company agrees to become a full liability participant and the name and address of each full liability participant. Solely that portion of the filed copy containing the designation of each full liability participant shall be a public record.

(b) The banking Commissioner may require a complete copy of the participation agreement to be filed with the Department, regardless of whether the state trust company has a full liability participant, except that the provisions of the participation agreement other than those by which a participant of the limited liability trust company agrees to become a full liability participant are confidential and subject to release only as provided by subchapter B, Chapter 2, of this Act.

§ 6.302. Liability of Participants and Managers

(a) Except as provided by subsection (b), the participants, participant-transferees, and managers of a limited liability trust company may not be held liable for a debt, obligation, or liability of the limited liability trust company, including a debt, obligation, or liability under a judgment, decree, or order of court. A participant, other than a full liability participant, or a manager of a limited liability trust company is not a proper party to proceedings by or against a limited liability trust company, unless the object of the proceeding is to enforce a participant's or manager's right against or liability to a limited liability trust company.

(b) A full liability participant of a limited liability trust company is liable under a judgment, decree, or order of court for a debt, obligation, or liability of the limited liability trust company that accrued during the participation of the full liability participant in the limited liability trust company and before the full liability participant or a successor in interest files a notice of withdrawal as a full liability participant from the limited liability trust company with the banking Commissioner. The filed notice of withdrawal is a public record.

§ 6.303. Contracting Debts and Obligations

Except as provided by this section or the articles of association of the limited liability trust company, debts, liabilities, and other obligations may be contracted for or incurred on behalf of a limited liability trust company by:

(1) a majority of the managers, if management of the limited liability trust company has been vested in a board of managers; -

(2) a majority of the managing participants; or

(3) an officer or other agent vested with actual or apparent authority to contract for or incur the debt, liability, or other obligation.

§ 6.304. Management of Limited Liability Trust Company

(a) Management of a limited liability trust company is vested in the participants in proportion to each participant's contribution to capital, as adjusted periodically to properly reflect any additional contribution. The articles of association may provide that management of a limited liability trust company is vested in a board of managers to be elected annually by the participants as prescribed by the bylaws.

(b) Participants of a limited liability trust company may not retain management and must elect a board of managers if:

(1) any participant is disqualified from serving as a managing participant under section 6.203 of this Act;

(2) the limited liability trust company has fewer than five or more than 25 participants; or

(3) any participant has been removed by the banking Commissioner under subchapter A, Chapter 6, of this Act.

(c) The articles of association, bylaws, and participation agreement of a limited liability trust company may use the terms "director" and "board" instead of "manager" and "board of managers," respectively.

§ 6.305. Withdrawal or Reduction of Participant's Contribution to Capital

(a) A participant may not receive from a limited liability trust company any part of the participant's contribution to capital until:

(1) all liabilities of the state trust company, except liabilities to participants on account of contribution to capital, have been paid or, if after the withdrawal or reduction, sufficient property of the state trust company will remain to pay all liabilities of the state trust company, except liabilities to participants on account of contribution to capital;

(2) all participants consent, unless the return of the contribution to capital may be demanded as provided by this chapter; or

(3) the articles of association are canceled or amended to set out the withdrawal or reduction.

(b) A participant may demand the return of the participant's contribution to capital on the dissolution of the limited liability trust company and the failure by the full liability participants to exercise the right for the business of the limited liability trust company to be carried on by the remaining participants as provided by section 6.307 of this Act.

(c) Unless allowed by the articles of association or by the unanimous consent of all participants of the limited liability trust company, a participant may demand the return of the participant's contribution to capital only in cash.

§ 6.306. Interest in Limited Liability Trust Company; Transferability of Interest

(a) The interest of a participant or participant-transferee in a limited liability trust company is the personal estate of the participant or the participant-transferee and may be transferred as provided by the bylaws or the participation agreement. A transferee of a participant's interest has the status of a participant-transferee and does not by the transfer become a participant or obtain a right to participate in the management of the limited liability trust company. A participant-transferee is entitled to receive only a share of profits, return of contribution, or other distributive benefit in respect to the interest transferred to which the participant who transferred the interest would have been entitled. A participant-transferee may become a participant only as provided by the bylaws or the participation agreement.

(b) A limited liability trust company may add additional participants in the same manner as participant-transferees after payment in full of the capital contribution to the limited liability trust company payable for the issuance of additional participation interests.

§ 6.307. Dissolution

(a) A limited liability trust company organized under this chapter is dissolved on:

(1) the expiration of the period fixed for the duration of the limited liability trust company;

(2) a vote to dissolve or the execution of a written consent to dissolve by all full liability participants, if any, and a sufficient number of other participants that combined with all full liability participants hold at least two-thirds of the participation shares in each class in the association, or a greater fraction as provided by the articles of association;

(3) except as provided by the articles of association, the death, insanity, expulsion, bankruptcy, retirement, or resignation of a participant unless a majority in interest of all remaining participants elect in writing not later than the 90th day after the date of the event to continue the business of the association; or

(4) the occurrence of an event of dissolution specified in the articles of association.

(b) A dissolution under this section is considered to be the initiation of a voluntary liquidation under subchapter B, Chapter 7, of this Act.

(c) An event of dissolution described by subsection (a)(3) of this section does not cancel or revoke a contract to which the state trust company is a party, including a trust indenture or agreement or voluntary dissolution under subchapter B, Chapter 7, of this Act, until the period for the remaining participants to continue the business of the state trust company has expired without the remaining participants having completed the necessary action to continue the business of the state trust company.

§ 6.308. Allocation of Profits and Losses

The profits and losses of a limited liability trust company may be allocated among the participants and among classes of participants as provided by the participation agreement. Without the prior written approval of the banking Commissioner, the profits and losses must be allocated based on the relative interests of the participants as reflected in the articles of association and related documents filed with and approved by the banking Commissioner.

§ 6.309. Distributions

Subject to section 4.107 of this Act, distributions of cash or other assets of a limited liability trust company may be made to the participants as provided by the participation agreement. Without the prior written approval of the banking Commissioner, distributions must be made to the participants based on the relative interests of the participants as reflected in the articles of association and related documents filed with and approved by the banking Commissioner.

§ 6.310. Other Provisions Related to a Limited Liability Trust Company

For purposes of the provisions of this Act other than this subchapter, as the context requires:

(1) a manager and the board of managers are considered to be a director and the board of directors, respectively;

(2) if there is not a board of managers, a participant is considered to be a director and all of the participants are considered to be the board of directors;

(3) a participant or participant-transferee is considered to be a shareholder;

- (4) a participation share is considered to be a share of stock; and
- (5) a distribution is considered to be a dividend.

SUBCHAPTER E. MERGER, CONSOLIDATION, TRANSFER OF ASSETS

§ 6.401. Merger Authority

(a) With the prior written approval of the Commissioner, a state trust company may merge or consolidate with another person to the same extent as a business corporation under the [state] Business Corporation Act, subject to this subchapter.

(b) Implementation of the plan of merger by the parties and approval of the board, shareholders, participants, or owners of the parties must be made or obtained as provided by the [state] Business Corporation Act as if the state trust company were a domestic corporation and all other parties to the merger were foreign corporations and other entities, except as otherwise provided by rules adopted under this chapter.

§ 6.402. Merger Application

(a) The original articles of merger, a number of copies of the articles of merger equal to the number of surviving, new, and acquiring entities, and an application in the form required by the Commissioner must be filed with the Commissioner. The Commissioner shall investigate the condition of the merging parties. The Commissioner may require the submission of additional information as considered necessary to an informed decision.

(b) The Commissioner may approve the merger if:

- (1) each resulting state trust company will be solvent and have adequate capitalization for its business and location;
- (2) each resulting state trust company has in all respects complied with the statutes and rules relative to the organization of a state trust company;
- (3) all fiduciary obligations and liabilities of each state trust company that is a party to the merger have been properly discharged or otherwise lawfully assumed or retained by a state trust company or other fiduciary;
- (4) each surviving, new, or acquiring person that is not authorized to engage in the trust business will not engage in the trust business and has in all respects complied with the laws of this state; and
- (5) all conditions imposed by the Commissioner have been satisfied or otherwise resolved.

§ 6.403. Approval of Commissioner

(a) If the Commissioner approves the merger and finds that all required filing fees and investigative costs have been paid, the Commissioner shall:

- (1) endorse the face of the original and each copy with the date of approval and the word "Approved";
- (2) file the original in the Department's records; and
- (3) deliver a certified copy of the articles of merger to each surviving, new, or acquiring entity.

(b) A merger is effective on the date of approval, unless the merger agreement provides and the Commissioner consents to a different effective date.

§ 6.404. Rights of Dissenters to Mergers

A shareholder, participant, or participant-transferee may dissent from the merger to the extent and by following the procedure provided by the [state] Business Corporation Act or rules adopted under this Act.

§ 6.405. Authority to Act as Disbursing Agent

The purchasing trust institution may hold the purchase price and any additional funds delivered to it by the selling institution in trust for the selling institution and may act as agent of the selling institution in disbursing those funds in trust by paying the creditors of the selling institution. If the purchasing trust institution acts under written contract of agency approved by the Commissioner that specifically names each creditor and the amount to be paid each, and if the agency is limited to the purely ministerial act of paying creditors the amounts due them as determined by the selling institution and reflected in the contract of agency and does not involve discretionary duties or authority other than the identification of the creditors named, the purchasing trust institution:

- (1) may rely on the contract of agency and the instructions included in it; and
- (2) is not responsible for:
 - (A) any error made by the selling institution in determining its liabilities, and creditors to whom the liabilities are due, or the amounts due the creditors; or
 - (B) any preference that results from the payments made under the contract of agency and the instructions included in it.

§ 6.406. Liquidation of Selling State Trust Company

If the selling trust institution is at any time after the sale of assets voluntarily or involuntarily closed for liquidation by a state or federal regulatory agency, the purchasing trust company shall pay to the receiver of the selling institution the balance of the funds held by it in trust for the selling institution and not yet paid to the creditors of the selling institution. Without further action the purchasing trust institution is discharged of all responsibilities to the selling institution, its receiver, or its creditors, shareholders, or participants.

§ 6.407. Payment to Creditors

Payment to a creditor of the selling institution of the amount to be paid the person under the terms of the contract of agency may be made by the purchasing trust company by opening an agency account in the name of the creditor, crediting the account with the amount to be paid the creditor under the terms of the agency contract, and mailing or personally delivering a duplicate ticket evidencing the credit to the creditor at the person's address shown in the records of the selling institution. The relationship between the purchasing trust institution and the creditor is that of agent to creditor only to the extent of the credit reflected by the ticket.

§ 6.408. Sale of Assets

(a) The board of a state trust company, with the Commissioner's approval, may cause a state trust company to sell all or substantially all of its assets, including the right to control accounts established with the trust company, without shareholder or participant approval if the Commissioner finds:

(1) the interests of the state trust company's clients, depositors, and creditors are jeopardized because of insolvency or imminent insolvency of the state trust company; and

(2) the sale is in the best interest of the state trust company's clients and creditors;
and

(3) the Federal Deposit insurance Corporation or its successor approves the transaction unless the deposits of the state trust company are not insured.

(b) A sale under this section must include an assumption and promise by the buyer to pay or otherwise discharge:

(1) all of the state trust companies liabilities to clients and depositors;

(2) all of the state trust company's liabilities for salaries of the state trust company's employees incurred before the date of the sale;

(3) obligations incurred by the Commissioner arising out of the supervision or sale

of the state trust company; and

(4) fees and assessments due the Department.

(c) This section does not limit the incidental power of a state trust company to buy and sell assets in the ordinary course of business.

(d) This section does not affect the Commissioner's right to take action under another law. The sale by a trust company of all or substantially all of its assets with shareholder or participant approval is considered a voluntary dissolution and liquidation and is governed by **[applicable provision of the state Banking Act]**.

CHAPTER 7. ENFORCEMENT ACTIONS

SUBCHAPTER A. SUPERVISION AND EXAMINATION

Section

- 7.001 COMMISSIONER SHALL HAVE SUPERVISION OVER AUTHORIZED TRUST INSTITUTIONS AND SHALL EXAMINE.
- 7.002 FEE FOR EXAMINATION.
- 7.003 COMMISSIONER TO ACT UNDER AUTHORITY OF THE DEPARTMENT.

SUBCHAPTER B. ENFORCEMENT ORDERS; TRUST COMPANY MANAGEMENT

Section

- 7.101. ADMINISTRATIVE ORDERS; PENALTIES FOR VIOLATION.
- 7.102. NOTICE AND OPPORTUNITY FOR HEARING.
- 7.103. SUBPOENA POWER AND EXAMINATION UNDER OATH.
- 7.104. REMOVAL OF DIRECTORS, OFFICERS AND EMPLOYEES.
- 7.105. REVIEW BY THE DEPARTMENT; ADDITIONAL PENALTIES.

CHAPTER 7. ENFORCEMENT ACTIONS

SUBCHAPTER A. SUPERVISION AND EXAMINATION

§ 7.001. Commissioner Shall Have Supervision Over Authorized Trust Institutions and Shall Examine

[DRAFTING NOTE: the term "authorized trust institutions" should be defined to mean any state trust company, trust office or representative trust office.]

Every authorized trust institution shall be under the supervision of the Commissioner. The Commissioner shall execute and enforce through the Department and such other agents as are now or may hereafter be created or appointed, all laws which are now or may hereafter be enacted relating to authorized trust institutions. For the more complete and thorough enforcement of the provisions of this Act, the Department is hereby empowered to promulgate such rules not inconsistent with the provisions of the Act, as may, in its opinion, be necessary to carry out the provisions of the laws relating to authorized trust institutions and as may be further necessary to insure safe and conservative management of an authorized trust institution under its supervision taking into consideration the appropriate interest of the creditors, stockholders, participants and the public in their relations with such authorized trust institutions. All authorized trust institutions doing business under the provisions of this Act shall conduct their business in a manner consistent with all laws relating to authorized trust institutions, and all rules, regulations, and instructions that may be promulgated or issued by the Department.

§ 7.002. Fee for Examination

[DRAFTING NOTE: This provision must be structured to fit each state's method of assessment, whether by assets under management, hourly, a combination of the two, or some other manner.]

§ 7.003. Commissioner to Act under Authority of the Department

All the powers, duties and functions granted to or imposed upon the Commissioner by law shall be exercised under the direction and supervision of the Department, and wherever provision is made in any law now in effect authorizing and permitting the Commissioner to make rules and regulations with respect to any actions or things required to be done under this Act, such rules and regulations shall be made by the Department, and the words "the Commissioner" used in such statutes authorizing the Commissioner to make rules and regulations, shall be construed to mean the Department, and the words "Department" substituted in such statutes for "Commissioner."

SUBCHAPTER B ENFORCEMENT ORDERS ; TRUST COMPANY MANAGEMENT

§ 7.101. Administrative Orders; Penalties for Violation

(a) In addition to any other powers conferred by this Act, the Commissioner shall have the power to:

- (1) Order any authorized trust institution, or subsidiary thereof; or any director, officer, or employee to cease and desist violating any provision of this Act or any lawful regulation issued thereunder.
- (2) Order any authorized trust institution, or subsidiary thereof, or any director, officer, or employee to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of the public in their relationship with the authorized trust institution.
- (3) Order any company to cease engaging in an unauthorized trust activity.
- (4) Enter any order pursuant to section 2.302 of this Act.

(b) The Commissioner may impose a civil money penalty of not more than **[amount to be determined]** for each violation by any authorized trust institution, or subsidiary thereof, or any director, officer, or employee of an order issued under subdivision (1) of subsection (a) of this section. Provided further, the Commissioner may impose a civil money penalty of not more than **[amount to be determined]** per day for each day that an authorized trust institution, or subsidiary thereof, or any director, officer, or employee violates a cease and desist order issued under subdivision (2) or (3) of subsection (a) of this section. All civil money penalties collected under this section shall be deposited in the General Fund **[define]**.

§ 7.102. Notice and Opportunity for Hearing

Consistent with [state administrative procedures act], notice and opportunity for hearing shall be provided before any of the foregoing actions shall be undertaken by the Commissioner. Provided, however, in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action, but shall promptly afford a subsequent hearing upon application to rescind the action taken.

§ 7.103. Subpoena Power and Examination Under Oath

The Commissioner shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject related to a duty imposed or a power vested in the Commissioner.

§ 7.104. Removal of Directors, Officers and Employees

Consistent with § 7.102 hereof, the Commissioner shall have the right, and is hereby empowered, to require the immediate removal from office of any officer, director, or employee of any authorized trust institution, who shall be found to be dishonest, incompetent, or reckless in the management of the affairs of the authorized trust institution, or who persistently violates the laws of this State or the lawful orders, instructions, and regulations issued by the Department.

§ 7.105. Review by the Department; Additional Penalties

Administrative orders issued by the Commissioner and civil money penalties imposed for violation of such orders shall be subject to review by the Department, which shall have power to amend, modify, or disapprove the same at any regular or special meeting. Notwithstanding any penalty imposed by the Commissioner, the Department may after notice of and opportunity for hearing, impose, enter judgment for, and enforce by appropriate process, a penalty of not more than _____ thousand dollars (\$_____) against any authorized trust institution, or subsidiary thereof, or against any of its directors, officers, or employees for violating any lawful orders of the Department or Commissioner. All civil money penalties collected under this section shall be deposited in the General Fund.

CHAPTER 8. DISSOLUTION AND RECEIVERSHIP; CONSERVATORSHIP

SUBCHAPTER A. VOLUNTARY DISSOLUTION AND LIQUIDATION

Section

- 8.001. REQUIRED VOTE OF SHAREHOLDERS OR PARTICIPANTS.
- 8.002. CORPORATE PROCEDURE.
- 8.003. AUTHORITY TO LIQUIDATE; PUBLICATION.
- 8.004. EXAMINATION AND REPORTS.
- 8.005. UNCLAIMED PROPERTY.
- 8.006. SELL OR TRANSFER OF PROPERTY.

SUBCHAPTER B. INVOLUNTARY DISSOLUTION AND LIQUIDATION

Section

- 8.101. WHEN COMMISSIONER MAY TAKE CHARGE.
- 8.102. DIRECTORS OR PARTICIPANTS MAY ACT.
- 8.103. NOTICE OF SEIZURE; BAR TO ATTACHMENT.
- 8.104. NOTICE TO TRUST INSTITUTIONS, CORPORATIONS AND OTHERS HOLDING ASSETS;
LIENS NOT TO ACCRUE.
- 8.105. PERMISSION TO RESUME BUSINESS.
- 8.106. REMEDY FOR SEIZURE; ANSWER TO NOTICE, INJUNCTION; AND APPEAL.
- 8.107. COLLECTION OF DEBTS AND CLAIMS; COMMISSIONER SUCCEEDS TO ALL
PROPERTY OF THE STATE TRUST COMPANY.
- 8.108. BOND OF THE COMMISSIONER; SURETY; CONDITION; MINIMUM PENALTY.
- 8.109. INVENTORY.
- 8.110. NOTICE AND TIME FOR FILING CLAIMS.
- 8.111. POWER TO REJECT CLAIMS; NOTICE; AFFIDAVIT OF SERVICE; ACTION ON CLAIMS.
- 8.112. LIST OF CLAIMS PRESENTED AND DEPOSITS; COPIES; PROVISIO.
- 8.113. DECLARATION OF DIVIDENDS; ORDER OF PREFERENCE IN DISTRIBUTION.
- 8.114. DEPOSIT OF FUNDS COLLECTED.
- 8.115. EMPLOYMENT OF COUNSEL; ACCOUNTANTS; AND OTHER EXPERTS; COMPENSATION.
- 8.116. UNCLAIMED DIVIDENDS HELD IN TRUST.
- 8.117. ACTION BY THE COMMISSIONER FOLLOWING FULL SETTLEMENT.
- 8.118. ANNUAL REPORT OF THE COMMISSIONER; ITEMS INCLUDED.
- 8.119. COMPENSATION OF THE COMMISSIONER.
- 8.120. EXCLUSIVE METHOD OF LIQUIDATION.
- 8.121. DISPOSITION OF BOOKS AND RECORDS.
- 8.122. DESTRUCTION OF BOOKS AND RECORD.
- 8.123. TRUST TERMINATED ON INSOLVENCY OF STATE TRUST COMPANY.
- 8.124. PETITION FOR NEW TRUSTEE.
- 8.125. PUBLICATION AND NOTICE.
- 8.126. APPOINTMENT WHERE NO OBJECTION MADE.
- 8.127. REARING UPON OBJECTION.
- 8.128. REGISTRATION OF FINAL ORDER.

8.129. PETITION AND ORDER APPLICABLE TO ALL INSTRUMENTS.

8.130. ADDITIONAL REMEDY.

8.131. REPORT TO THE SECRETARY OF STATE.

CHAPTER 8. DISSOLUTION AND RECEIVERSHIP; CONSERVATORSHIP

SUBCHAPTER A. VOLUNTARY DISSOLUTION AND LIQUIDATION

§ 8.001. Required Vote of Shareholders or Participants

A state trust company may go into voluntary liquidation and be closed, and may surrender its charter and franchise as a corporation of this State by the affirmative votes of its shareholders or participants owning two thirds of its stock or participation shares.

§ 8.002. Corporate Procedure

Shareholder or participant action to liquidate a state trust company shall be taken at a meeting of the shareholders or participants duly called by resolution of the board of directors or members, written notice of which, stating the purpose of the meeting, shall be mailed to each shareholder or participant, or in case of a shareholder's or participant's death, to such shareholder's or participant's legal representative or heirs at law, addressed to the shareholder's or participant's last known residence 10 days previous to the date of such meeting. If stockholders or participants shall, by the required vote, elect to liquidate a trust company, a certified copy of all proceedings of the meeting at which such action shall have been taken, verified by the oath of the president and secretary, shall be transmitted to the Commissioner for approval.

§ 8.003. Authority to Liquidate; Publication

If the Commissioner shall approve the liquidation, the Commissioner shall issue to the state trust company under the Commissioner's seal, a permit for such purpose. No such permit shall be issued by the Commissioner until the Commissioner shall be satisfied that provision has been made by the state trust company to satisfy and pay off all creditors. If not so satisfied, the Commissioner shall refuse to issue a permit, and shall be authorized to take possession of the state trust company and its assets and business, and hold the same and liquidate the state trust company in the manner provided in this Act. When the Commissioner shall approve the voluntary liquidation of a state trust company, the directors of said state trust company shall cause to be published in a newspaper in the county in which the same is located, or if no newspaper is published in such county, then in a newspaper having a general circulation in such county, a notice that the state trust company is closing down its affairs and going into liquidation, and notify its creditors to present their claims for payment. Such notice shall be published once a week for four consecutive weeks.

§ 8.004. Examination and Reports

When any state trust company shall be in process of voluntary liquidation, it shall be subject to examination by the Commissioner, and shall furnish such reports from time to time as may be called for by the Commissioner.

§ 8.005. Unclaimed Property

All unclaimed property remaining in the hands of a liquidated state trust company shall be subject to the provisions of [x-ref to state escheat laws].

§ 8.006. Sell or Transfer of Property

Whenever the Commissioner shall approve it, any state trust company may sell and transfer to any other trust institution, whether state or federally chartered, all of its assets of every kind upon such terms as may be agreed upon and approved by the Commissioner and by two-thirds vote of its board of directors or members. A certified copy of the minutes of any meeting at which such action is taken, under the oath of the president and secretary, together with a copy of the contract of sale and transfer, shall be filed with the Commissioner. Whenever voluntary liquidation shall be approved by the Commissioner or the sale and transfer of the assets of any state trust company shall be approved by the Commissioner, a certified copy of such approval under seal of the Commissioner, filed in the office of the Secretary of State, shall authorize the cancellation of the charter of such state trust company, subject, however, to its continued existence, as provided by this Act and the general law relative to corporations.

SUBCHAPTER B. INVOLUNTARY DISSOLUTION AND LIQUIDATION

§ 8.101. When Commissioner may take charge

The Commissioner may forthwith take possession of the business and property of any state trust company to which this Act is applicable whenever it shall appear that such state trust company:

- (1) Has violated its charter or any laws applicable thereto;
- (2) Is conducting its business in an unauthorized or unsafe manner;
- (3) Is in an unsafe or unsound condition to transact its business;
- (4) Has an impairment of its capital;
- (5) Has become otherwise insolvent;
- (6) Has neglected or refused to comply with the terms of a duly issued lawful order of the Commissioner;
- (7) Has refused, upon proper demand, to submit its records, affairs, and concerns for inspection and examination of a duly appointed or authorized examiner of the Commissioner;
- (8) Its officers have refused to be examined upon oath regarding its affairs; or
- (9) Has made a voluntary assignment of its assets to trustees.

§ 8.102. Directors May Act

Any state trust company may place its assets and business under the control of the Commissioner for liquidation by a resolution of a majority of its directors or members upon notice to the Commissioner, and, upon taking possession of the state trust company, the Commissioner, or duly

appointed agent, shall retain possession thereof until such state trust company shall be authorized by the Commissioner to resume business or until the affairs of said state trust company shall be fully liquidated as herein provided. No state trust company shall make any general assignment for the benefit of its creditors except by surrendering possession of its assets to the Commissioner, as herein provided. Whenever any state trust company for any reason shall suspend operations for any length of time, the state trust company shall, immediately upon such suspension of operations, be deemed in the possession of the Commissioner and subject to liquidation hereunder.

§ 8.103. Notice of Seizure; Bar to Attachment

When the Commissioner, or duly appointed agent, shall take possession of any state trust company under subsections 8.101 or 8.102 hereof the Commissioner or agent shall within 48 hours, file with the clerk of the superior court in the county where the state trust company is located, a notice of such action which shall state the reason therefor, and such notice shall be deemed the equivalent of a summons and complaint against the state trust company in an action in the superior court except that it shall not be necessary to make service thereof. The taking possession of any state trust company shall be effective on the date when such authority was exercised and from and after such time all assets and property of such state trust company, of whatever nature, shall be deemed to be in possession of the Commissioner, and the exercise of such authority shall operate as a bar to any attachment, or other legal proceeding against the state trust company or its assets. After the Commissioner's exercise of authority, no lien shall be acquired, in any manner binding or affecting any of the assets of the state trust company and every transfer or assignment made thereafter by the state trust company, or by its authority, of the whole or any part of its assets, shall be null and void; and the Commissioner, shall be substituted in place of the state trust company in all actions in the State or federal courts, pending at the time of the exercise of such authority.

§ 8.104. Notice to Trust Institutions, Corporations and Others Holding Assets; Liens Not to Accrue

Upon taking possession of the assets and business of any state trust company, the Commissioner, or duly appointed agent, shall forthwith give notice, by mail or otherwise, of such action to all trust institutions or other persons or corporations holding, or having in possession, any assets of such state trust company. No trust company or other person or corporation shall have a lien or charge for any payment, advance or clearance made, or liability incurred against any of the assets of said state trust company after possession has been taken as provided under this section, except as hereinafter provided.

§ 8.105. Permission to Resume Business

After the Commissioner has taken possession of any state trust company, such state trust company may resume business as provided in [x-ref to appropriate statute].

§ 8.106. Remedy for Seizure; Answer to Notice, Injunction; and Appeal

Whenever any state trust company, of whose assets and business the Commissioner has taken possession as herein provided, except where possession is taken under § 8.102 hereof, shall deem itself aggrieved thereby, and it may, at any time within 10 days after the filing of the notice with the clerk of the superior court, file an answer to said notice and may also upon notice to the Commissioner, apply to the resident or presiding judge of the district for an injunction to enjoin further proceedings by the Commissioner. The judge of superior court may cite the Commissioner to show cause within 10 days thereafter why further proceedings should not be enjoined, and after hearing the allegations and proof of the parties with respect to the condition of said state trust company, may dismiss such application for injunction or may enjoin further proceedings under this section by the Commissioner. If the judge shall enjoin further action of the Commissioner and permit the reopening of the state trust company, the judge shall have authority to require of such state trust company a surety bond as the judge deems necessary to insure its solvency, payable to the Commissioner for the sole benefit of the general creditors of the state trust company, and upon such terms as the judge may deem proper. Either party shall have the right to appeal to the Supreme Court as in other actions.

§ 8.107. Collection of Debts and Claims; Commissioner Succeeds to All Property of the State Trust Company

(a) Upon taking possession of the assets and business of any state trust company by the Commissioner, or a duly appointed agent, the Commissioner or agent is authorized to collect all money due the state trust company, and to do such other acts as are necessary to conserve its assets and property, and shall proceed to liquidate the affairs thereof, as hereinafter provided. The Commissioner, or a duly appointed agent, shall collect all debts due and claims belonging to the state trust company, by suit, if necessary; and, by motion in the pending action, and, upon authority of an order of the presiding or resident judge of the district, may sell, compromise or compound any bad or doubtful debt or claim, and may upon such order, sell the real and personal property of the state trust company on such terms as the order may provide or direct, except that, where the sale is made under power contained in any mortgage or lien bond or other paper wherein the title is retained for sale and the terms of sale set out, sale may be made under said authority.

(b) Upon taking possession of any state trust company under this section, the Commissioner and/or the duly appointed agent, shall have the possession and the right to the possession of all the property, assets, choses in action, rights and privileges of the state trust company, including the right to resign the trust or exercise the power in all papers executed to secure the payment of money in any form in which the state trust company shall have been named as trustee and/or pledgee, and such property right and privileges shall vest in the Commissioner and/or duly appointed liquidating agent absolutely, for the purpose of liquidating, and sales and conveyance of the same, together with any and all other incidental rights, privileges, and powers necessary and convenient for the enjoyment of the right of conveyance and sale and for the exercise of the same. Upon the motion made, the state trust company or any person interested, may be heard, but the judge hearing the motion shall enter an order as in the judge's discretion will best serve the parties interested.

(c) The officers and directors of any state trust company, or any state trust company that is in liquidation as provided by law, shall not hereafter exercise any powers herein declared to be vested in the Commissioner, and/or the duly appointed liquidating agent.

§ 8.108. Bond of the Commissioner; Surety; Condition; Minimum Penalty

Upon taking possession of any state trust company, the Commissioner, or a duly appointed agent shall execute and file a bond payable to this State, with some surety company as surety thereon, with the clerk of the superior court of the county where the state trust company is located, conditioned upon the faithful performance of all duties imposed by reason of the liquidation of such state trust company by the Commissioner, or duly appointed agent assisting in the liquidation of a state trust company, the penal sum of said bond to be fixed by order of the Commissioner, which in no case shall be less than **[amount to be determined]**. Any person interested, by motion in the pending action, shall be heard by the resident or presiding judge of superior court as to the sufficiency of the bond; the judge hearing the motion may thereupon fix the bond

§ 8.109. Inventory

Within 30 days after the filing of the notice of the taking possession of a state trust company in the office of the clerk of the superior court, the Commissioner, or a duly appointed agent, shall file an inventory of the assets and liabilities of such state trust company. A copy of the inventory shall be filed with the clerk of the superior court in the pending action and a copy shall be kept on file in the state trust company. The inventory shall be open for inspection during the usual business hours, provided, that nothing herein shall require the state trust company to remain open unnecessarily.

§ 8.110. Notice and Time for Filing Claims

Notice shall be given by advertisement once a week for four consecutive weeks in a newspaper published in the county where the state trust company is located, or if no newspaper is published in the county, then in some newspaper having a general circulation in the county, calling on all persons who may have claims against the state trust company to present the same to the Commissioner at the office of the state trust company, and within the time to be specified in the notice which time shall not be less than 90 days from the date of the first publication. A copy of this notice shall be mailed to all persons whose names appear as creditors upon the books of the state trust company. Affidavit by the Commissioner, or agent mailing the notice, to the effect that said notice was mailed shall be conclusive evidence thereof.

§ 8.111. Power to Reject Claims; Notice; Affidavit of Service; Action on Claims

If the Commissioner, or a duly appointed agent, doubts the validity of any claim, the Commissioner or agent may reject the same and serve notice of such rejection upon the claimant, either personally or by registered mail, and an affidavit of the service of such notice shall be filed in the office of the clerk of the superior court in the pending action, and shall be conclusive evidence of such notice. Any action or suit upon rejected claim must be brought by the claimant against the Commissioner or agent, in the superior court of the county in which the state trust company is located within 90 days after such service, or the same shall be barred. Objections to any claim not rejected by the Commissioner, or the duly appointed agent, may be made by any person interested by filing such objection in the

pending action and by serving a copy thereof on the Commissioner, or duly appointed agent and the Commissioner, or duly appointed agent, after investigation, shall either allow such objection and reject the claim, or disallow the objection. If the objection is not allowed and the claim not rejected, the Commissioner, or the duly appointed agent shall file a notice to this effect in the pending action; and within 10 days thereafter, the person filing objection by motion in the pending action, a copy of which notice shall be served upon the person whose claim or deposit is objected to, any present to the court the question of the validity of said claim; and the questions of law and issues of fact shall thereupon be determined as in other civil actions,

§ 8.112. List of Claims Presented and Deposits; Copies; Proviso

Upon the expiration of the time fixed for presentation of claims, the Commissioner, or the duly appointed agent, shall make a full and complete list of the claims presented, including and specifying any claims which have been rejected. One copy shall be filed in the office of the clerk of the superior court in the pending action, and one copy shall be kept on file with the inventory in the office of the state trust company for examination. Any claim which may be presented after the expiration of the time fixed for the presentation of claims in the notice hereinbefore provided shall, if allowed, share pro rata in the distribution only of those assets of the state trust company in the hands of the Commissioner, and undistributed at the time the claim is presented. Provided, that when it is made to appear to the judge of the superior court, resident or presiding in the county, that the claim could not have been filed within said period, the judge may permit those creditors or depositors who subsequently file their claim to share as other creditors.

§ 8.113. Declaration of Dividends; Order of Preference in Distribution

At any time after the expiration of the date fixed by the Commissioner, or the duly appointed agent, for the presentation of claims against the state trust company, and from time-to-time thereafter, the Commissioner, out of the funds in the hands of the Commissioner, after the payment of expenses and priorities, may declare and pay dividends to the shareholders or participants and other creditors of such state trust company in the order now or hereafter provided by law; and a dividend may be declared when and as often as the funds on hand subject to the payment of dividends shall be sufficient to pay ten per centum (10%) of all claims entitled to share in such dividends. In paying dividends and calculating the same, all disputed claims shall be taken into account, but no dividend shall be paid upon such disputed claims until the same shall have been finally determined. The following shall be the order and preference in the distribution of the assets of any state trust company liquidated hereunder:

- (1) Taxes and fees due the Commissioner for examination or other services;
- (2) Wages and salaries due officers and employees of the state trust company, for a period of not more than four months;
- (3) Expenses of liquidation;
- (4) Amounts due creditors other than stockholders or participants.

The word "asset" used herein shall not be deemed to include bailments or other property to which the state trust company has no title. A statement of all dividends paid shall be filed in the office of the clerk of the superior court in the pending action, and such statements shall show the expenses

deducted and the disputed claims in determining said dividend.

§ 8.114. Deposit of Funds Collected

All funds collected by the Commissioner, in liquidating any state trust company, shall be deposited from time-to-time in a bank as may be selected by the Commissioner, and shall be subject to the check of the Commissioner.

§ 8.115. Employment of Counsel; Accountants; and other Experts; Compensation

The Commissioner, for the purpose of liquidating state trust companies as herein provided, shall employ such liquidating agents, competent local attorneys, accountants and clerks as may be necessary to properly liquidate and distribute the assets of a state trust company, and shall fix the compensation for all such agents, attorneys, accountants and clerks, and shall pay the same out of the funds derived from the liquidation of the assets of the state trust company: Provided, that all expenditure for the purpose herein provided shall be approved by the resident or presiding judge in the pending action at such time as the same may be reported, and such charges shall be a proper charge and lien on the assets of the state trust company until paid.

§ 8.116. Unclaimed Dividends Held in Trust

Any unclaimed dividends remaining in the hands of the Commissioner for six months after the order for final distributions shall be held in trust for the several creditors of the liquidated state trust company; and the money so held by the Commissioner shall be paid over to the persons respectively entitled thereto as and when satisfactory evidence of their right to the same is furnished. In case of doubtful or conflicting claims the Commissioner shall have authority to apply to the superior court of the county, by motion in the pending action, for an order from the resident or presiding judge of the superior court directing the payment of the moneys so claimed. When issues of fact are raised by motion, the same may, upon request of any claimant, be determined as in other civil actions. The interest earned on the unclaimed dividend so held shall be applied toward defraying the expenses incurred in the distribution of such unclaimed dividends. The balance of interest, if any, shall be deposited and held as other funds to the credit of the Commissioner. After the Commissioner has held the unclaimed dividends held in trust under the provisions of this statute for the creditors of the liquidated state trust company for a period of 10 years, the Commissioner is hereby given the authority to pay the principal amount of such unclaimed dividends to the State Treasurer, to be held by the State Treasurer without liability for profit or interest until a just claim therefore shall be made by the parties entitled thereto. Upon payment of unclaimed dividends to the State Treasurer, the Commissioner shall be fully discharged from all further liability therefore.

§ 8.117. Action by the Commissioner Following Full Settlement

Whenever the Commissioner shall have paid all the expenses of liquidation and shall have paid to each and every creditor of such state trust company, whose claims shall have been duly proven and allowed, the full amount of such claims, and shall have made proper provision for unclaimed and unpaid and disputed claims, and shall have in hand other assets of said state trust company, the Commissioner shall call a meeting of the shareholders or participants of the state trust company by giving notice thereof by publication once a week for four consecutive weeks in a newspaper published in said county, or if no newspaper is published in said county, then in a newspaper having general circulation in said county, and by mailing a copy of such notice to each shareholder's or participant's address as the same shall appear upon the books of the state trust company. Affidavit of the mailing of the notice herein required and of the printer as to the publication shall be conclusive evidence of notice hereunder. At such meeting any shareholders or participants may be represented by proxy and the shareholders or participants shall elect, by a majority vote of the stock present, an agent or agents who shall be authorized to receive from the Commissioner all the assets of the state trust company then remaining in Commissioner's hands; and the Commissioner shall cause to be transferred and delivered to the said agent, or agents, all such assets of said state trust company. The Commissioner shall thereupon cause to be filed in the office of the clerk of the superior court in the pending actions a full and complete report of all his transactions, showing the assets of said state trust company so transferred, together with the name of the agent or agents receipting for the same; and the filing of such report shall act as a full and complete discharge of the Commissioner from all further liabilities by reason of the liquidation of the state trust company. Such agent, or agents, shall convert the assets coming into his or her hands, or their hands, into cash, and shall make distribution to the shareholders or participants of said state trust company as herein provided. The agent, or agents, shall file semiannually a report of all transactions with the superior court of the county in which the state trust company is located, and with the Commissioner, and shall be allowed for such services such fees not in excess of five percent (5%), as may be fixed by the court. In case of death, removal or refusal to act, of any agent or agents elected by the shareholders or participants, the Commissioner shall, upon report of such action on the part of such agent or agents to the superior court of the county in which the state trust company is located, turn over to said superior court for the stockholders of said state trust company, all the remaining assets of the state trust company, file the required report and be discharged from any and all further liability to the shareholders or participants as herein provided. The assets, when turned over to the superior court hereunder, shall remain in the hands of the court until such time as, by court order or by action of the shareholders or participants, distribution shall be provided for.

§ 8.118. Annual Report of the Commissioner; Items Included.

The Commissioner shall file, as a part of an annual report to the Governor, a list of the names of the state trust companies of which possession was taken and liquidated; and the Commissioner shall, from time-to-time compile and make available for public inspection, reports showing the condition of each and all such state trust companies; and the annual report of the Commissioner shall show the sum of unclaimed assets, with respect to each state trust company, and shall show all depositories of all sums coming into the hands of the Commissioner under the provisions of this section.

§ 8.119. Compensation of the Commissioner

The Commissioner, for services rendered in connection with the liquidation of state trust companies hereunder, shall be entitled to actual expenses incurred in connection with the liquidation of each state trust company, including therein a reasonable sum for the time of the examiners and other agents of the Commissioner, which expenses shall be a prior lien on the assets of such state trust company so liquidated until paid in full; and the Commissioner shall have authority to prescribe reasonable rules and regulations for fixing such expenses.

§ 8.120. Exclusive Method of Liquidation

No state trust company created prior to the effective date of this Act shall be liquidated in any other way or manner than that provided herein.

§ 8.121. Disposition of Books and Records

All books, papers and records of a state trust company which has been finally liquidated shall be deposited by the receiver in the office of the clerk of the superior court for the county in which the office of such state trust company is located, or in such other place as in the receiver's judgment will provide for the proper safekeeping and protection of such books, papers, and records. The books, papers, and records herein referred to shall be held subject to the orders of the Commissioner and the clerk of the superior court for the county in which such state trust company was located.

§ 8.122. Destruction of Books and Records

After the expiration of **[period of time to be selected]** from the date of filing in the office of the clerk of the superior court of a final order approving the liquidation by the Commissioner of any insolvent state trust company and the delivery to the clerk or into the clerk's custody of the records of such state trust company, the same may be destroyed by the clerk of the superior court.

After **[period of time to be selected]** from the filing by the Commissioner of a final report of liquidation of any insolvent state trust company, the Commissioner, by and with the consent of the Department or its successor, may destroy the records of any insolvent state trust company held in the Office of the Commissioner in connection with the liquidation of such state trust company: Provided, that in connection with any unpaid dividends the Commissioner shall preserve the records or other evidence of indebtedness of the trust company with reference to the unpaid dividend until the dividend shall have been paid.

§ 8.123. Trust Terminated on Insolvency of State Trust Company

Whenever any state trust company created under the laws of this State, which has heretofore been, or shall hereafter be, appointed trustee in any indenture, deed of trust or other instrument of like character, executed to secure the payment of any bonds, notes or other evidences of indebtedness, has been or shall be by reason of insolvency, or for any other cause provided by law, taken over for

liquidation by the Commissioner of this State or by any other legally reconstituted authority, the powers and duties of such state trust company as trustee in any such instrument shall, upon the entry of an order of the clerk of the superior court appointing a successor trustee, upon a petition as hereinafter provided, immediately cease and terminate.

§ 8.124. Petition for New Trustee

In all cases of insolvency and liquidation provided in this Chapter, the clerk of the superior court of any county in which such indenture, deed of trust or other instrument of like character is recorded, shall, upon the verified petition of any person interested in any such trust, either as trustee, beneficiary or otherwise, which interest shall be set out in said petition, enter an order directing service on all interested parties either personally or by the publication in some newspaper published in the county, or in some adjoining county if no newspaper is published in the county where such application is made, a notice directed to all persons concerned, commanding and requiring all persons having any interest in said trust, appear in the clerk's office at a day designated in the order and notice, not less than 30 days from the date thereof, and show cause why a new trustee shall not be appointed.

§ 8.125. Publication and Notice

Such notice shall be published in the manner required by law for service of summons by publication, and shall set forth the names of the parties to the indenture deed of trust, or other such instrument, the date thereof, and the place or places where the same is recorded.

§ 8.126. Appointment Where No Objection Made

If, upon the day fixed in said notice, no person appears and object to the appointment of a substitute trustee, the clerk, shall, upon such terms the clerk deems advisable and in the best interest of all parties, appoint some competent person, or corporation authorized to act as, substitute trustee. The substitute trustee shall be vested with and shall exercise all the powers reconferred upon the trustee named in this instrument.

§ 8.127. Rearing Upon Objection

If objections are made to the appointment of a new trustee, the clerk shall hear and determine the matter, and from the clerk's decision an appeal may be prosecuted as in the case of special proceedings generally.

§ 8.128. Registration of Final Order

The final order of appointment of a new trustees shall be certified by the clerk of the superior court in an order which shall be recorded in the office of the register of deeds in the county or counties in which the instrument under which the appointment has been made was recorded, and a notation of the same shall be entered by the register of deeds on the margin of the record where the original instrument was recorded.

§ 8.129. Petition and Order Applicable to All Instruments

The petition and the order appointing a new trustee may include, relate and apply to any number of indentures, deeds of trust or other instruments, wherein the same trustee is named.

§ 8.130. Additional Remedy

Sections 8.124 and 8.129 shall be in addition to and not in substitution for any other remedy provided by law.

§ 8.131. Report to the Secretary of State

The Commissioner shall on or before the first day of each year thereafter file with the Secretary of the State a report showing all state trust companies under liquidation in this State, and the names of any and all auditors together with the amounts paid to them for auditing each of said state trust companies, and the names of any and all attorneys employee in connection with the liquidation of said state trust companies together with the amount paid or contracted to be paid to each of said attorneys. If any attorney has been employed on a fee contingent upon recovery, the report must state in substance the contract.

Within five days from the receipt of the report the Secretary of the State of this State shall cause the same to be published one time in some newspaper published in each county in which a state trust company or state trust companies are under liquidation. If there is no newspaper published in the county, the Secretary of the State of this State shall cause a copy of the report to be posted at the courthouse door in the county.