

By: Campbell

S.B. No. 1401

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of banks and trust companies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 31.002, Finance Code, is amended by adding Subdivision (55-a) to read as follows:

(55-a) "Third-party service provider" means a person, company, or other legal entity that:

(A) provides data processing services;

(B) performs activities in support of the provision of financial services, including lending, transferring funds, fiduciary activities, trading activities, and deposit taking activities;

(C) provides Internet-related services, including web services, processing electronic bill payments, developing and maintaining mobile applications, system and software development and maintenance, and security monitoring; or

(D) performs activities relating to the business of banking.

SECTION 2. Sections 31.107(a) and (b), Finance Code, are amended to read as follows:

(a) The banking commissioner may regulate and examine, to the same extent as if the services or activities were performed by a state bank on its own premises:

(1) the activities of a state bank affiliate; and

(2) the ~~[performance of data processing, electronic fund transfers, or other bank]~~ services or activities of a third-party service provider that a state bank or state bank affiliate has contracted for or otherwise arranged to be performed on behalf of the ~~[a]~~ state bank or state bank affiliate ~~[by a third-party contractor, other than a national bank]~~.

(b) The banking commissioner may collect a fee from an examined third-party service provider ~~[contractor]~~ or affiliate in connection with each examination to cover the cost of the examination or may collect that fee from the state banks that use the examined third-party service provider ~~[contractor]~~.

SECTION 3. Section 31.301(a), Finance Code, is amended to read as follows:

(a) Except as expressly provided otherwise by this subtitle, Chapter 11 or 12, or a rule adopted under this subtitle, the following are confidential and may not be disclosed by the banking commissioner or an employee of the department:

(1) information directly or indirectly obtained by the department in any manner, including an application or examination, concerning the financial condition or business affairs of a financial institution, ~~[or]~~ a present, former, or prospective shareholder, officer, director, or affiliate of a financial institution, or a third-party service provider of a financial institution or its affiliate, other than information in a published statement or in the public portion of a call report or profit and loss statement; and

(2) all related files and records of the department.

SECTION 4. Subchapter D, Chapter 31, Finance Code, is amended by adding Section 31.3015 to read as follows:

Sec. 31.3015. DISCLOSURE TO STATE BANKS. The banking commissioner may disclose to a state bank information about an affiliate or third-party service provider of the state bank.

SECTION 5. Section 33.106, Finance Code, is amended to read as follows:

Sec. 33.106. OFFICERS. (a) The board shall annually appoint the officers of the bank, who serve at the will of the board. Unless the banking commissioner consents otherwise in writing, a person may not serve as an officer of a state bank if:

(1) the person is the subject of an order described by Section 35.007(a); or

(2) the person has been convicted of a felony.

(b) The bank must have a principal executive officer primarily responsible for the execution of board policies and operation of the bank and an officer responsible for the maintenance and storage of all corporate books and records of the bank and for required attestation of signatures. Those positions may not be held by the same person. The board may appoint other officers of the bank as the board considers necessary.

SECTION 6. Section 35.007(a), Finance Code, is amended to read as follows:

(a) Except as otherwise provided by law, without the prior written approval of the banking commissioner, a person subject to a final and enforceable removal or prohibition order issued by the banking commissioner, or by another state, federal, or foreign

financial institution regulatory agency, may not:

(1) serve as a director, officer, or employee of a state bank, state ~~or~~ trust company, or holding company of a state bank, or as a director, officer, or employee with financial responsibility of any other entity chartered, registered, permitted, or licensed by the banking commissioner under the laws of this state;

(2) directly or indirectly participate in any manner in the management of such an entity;

(3) directly or indirectly vote for a director of such an entity; or

(4) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote a proxy, consent, or authorization with respect to voting rights in such an entity.

SECTION 7. Section 35.101, Finance Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) Subject to Subsection (d), a ~~A~~ supervisor serves until the earlier of:

(1) the expiration of the period stated in the order of supervision; or

(2) the date the banking commissioner determines that the requirements for abatement of the order have been satisfied.

(d) The banking commissioner may terminate an order of supervision at any time.

SECTION 8. Section 35.206(a), Finance Code, is amended to read as follows:

1 (a) On certification by the banking commissioner, a book,  
2 record, paper, or document produced or testimony taken as provided  
3 by Section 35.203 [~~35.204~~] and held by the department is admissible  
4 as evidence in any case without prior proof of its correctness and  
5 without other proof. The certified book, record, document, or  
6 paper, or a certified copy, is prima facie evidence of the facts it  
7 contains.

8 SECTION 9. Section 181.002, Finance Code, is amended by  
9 adding Subdivision (47-b) to read as follows:

10 (47-b) "Third-party service provider" means a person,  
11 company, or other legal entity that:

12 (A) provides data processing services;

13 (B) performs activities in support of the  
14 provision of financial services, including lending, transferring  
15 funds, fiduciary activities, trading activities, and deposit  
16 taking activities;

17 (C) provides Internet-related services,  
18 including web services, processing electronic bill payments,  
19 developing and maintaining mobile applications, system and  
20 software development and maintenance, and security monitoring; or

21 (D) performs activities relating to the trust  
22 business.

23 SECTION 10. Section 181.106, Finance Code, is amended to  
24 read as follows:

25 Sec. 181.106. REGULATION AND EXAMINATION OF RELATED  
26 ENTITIES. (a) The banking commissioner may regulate and examine,  
27 to the same extent as if the services or activities were performed

by a state trust company on its own premises:

(1) the activities of a state trust company affiliate;  
and

(2) the ~~[performance of data processing, electronic fund transfers, or other]~~ services or activities of a third-party service provider that a state trust company or state trust company affiliate has contracted for or otherwise arranged to be performed on behalf of the [a] state trust company or state trust company affiliate [by a third-party contractor].

(b) The banking commissioner may collect a fee from an examined third-party service provider or affiliate in connection with each examination [the state trust company] to cover the cost of the examination or may collect that fee from the state trust companies that use the examined third-party service provider.

SECTION 11. Section 181.301(a), Finance Code, is amended to read as follows:

(a) Except as expressly provided otherwise by this subtitle or a rule adopted under this subtitle ~~[Section 181.003(a)(1)]~~, the following are confidential and may not be disclosed by the banking commissioner or an employee of the department:

(1) information directly or indirectly obtained by the department in any manner, including through an application or examination, concerning the financial condition or business affairs of a state trust company, ~~[or]~~ a present, former, or prospective shareholder, participant, officer, director, manager, or affiliate of the state trust company, or a third-party service provider of the state trust company or its affiliate, other than the

1 public portions of a report of condition or income statement; and

2 (2) each related file or record of the department.

3 SECTION 12. Subchapter D, Chapter 181, Finance Code, is  
4 amended by adding Section 181.3015 to read as follows:

5 Sec. 181.3015. DISCLOSURE TO STATE TRUST COMPANIES. The  
6 banking commissioner may disclose to a state trust company  
7 information about an affiliate or third-party service provider of  
8 the state trust company.

9 SECTION 13. Section 183.106(a), Finance Code, is amended to  
10 read as follows:

11 (a) The board shall annually appoint the officers of the  
12 state trust company, who serve at the will of the board. Unless the  
13 banking commissioner consents otherwise in writing, a person may  
14 not serve as an officer of a state trust company if:

15 (1) the person is the subject of an order described by  
16 Section 185.007(a);

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

18 (3) the person has violated, with respect to a trust  
19 under which the state trust company has fiduciary responsibility,  
20 Section 113.052 or 113.053(a), Property Code, relating to loan of  
21 trust funds and purchase or sale of trust property by the trustee,  
22 and the violation has not been corrected.

23 SECTION 14. Section 185.007(a), Finance Code, is amended to  
24 read as follows:

25 (a) Except as provided by other law, without the prior  
26 written approval of the banking commissioner, a person subject to a  
27 final and enforceable removal or prohibition order issued by the

banking commissioner, or by another state, federal, or foreign financial institution regulatory agency, may not:

(1) serve as a director, officer, or employee of a state trust company, ~~or~~ state bank, or holding company of a state bank, or as a director, officer, or employee with financial responsibility of any other entity chartered, registered, permitted, or licensed by the banking commissioner under the laws of this state while the order is in effect;

(2) directly or indirectly participate in any manner in the management of such an entity;

(3) directly or indirectly vote for a director of such an entity; or

(4) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote a proxy, consent, or authorization with respect to voting rights in such an entity.

SECTION 15. Section 185.101, Finance Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) Subject to Subsection (d), the ~~The~~ supervisor serves until the earlier of:

(1) the expiration of the period stated in the order of supervision; or

(2) the date the banking commissioner determines that the requirements for abatement of the order have been satisfied.

(d) The banking commissioner may terminate an order of supervision at any time.

SECTION 16. This Act takes effect September 1, 2017.