

BILL ANALYSIS

C.S.H.B. 3555
By: Parker
Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have expressed concern that certain Finance Code provisions applicable to the banking commissioner's authority to take certain enforcement actions are unclear with regards to the subsidiaries of state banks, subsidiaries of state trust companies, and bank holding companies. Furthermore, there are concerns regarding administrative procedures governing contested cases, cease and desist orders, and removal or prohibition orders. C.S.H.B. 3555 seeks to address these issues.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3555 amends the Finance Code to subject the subsidiaries of state banks and state trust companies and certain persons participating in the affairs of such subsidiaries to Texas Banking Act and Texas Trust Company Act provisions governing enforcement orders and supervision and conservatorship, as applicable.

C.S.H.B. 3555 authorizes the banking commissioner to informally dispose of a matter related to state banks or state trust companies that is within the jurisdiction of and before the commissioner by consent order, agreed settlement, or default.

C.S.H.B. 3555 authorizes a proposed cease and desist order against a state bank or state trust company to require an officer, employee, director, manager, or managing participant, as applicable, of the financial institution, or the institution itself acting through an authorized person, to cease or desist from a violation or other practice or to take affirmative action to correct the conditions resulting from a violation or other practice, including the payment of restitution or other action that the commissioner determines is appropriate.

C.S.H.B. 3555 establishes a final conviction of a felony involving a state bank or other financial institution, dishonesty, or breach of trust as grounds for the commissioner to remove or prohibit a person from further participation in the affairs of a state bank or state trust company or any other entity chartered, registered, permitted, or licensed by the commissioner. The bill establishes that, for such purposes, a person is considered to have been finally convicted of an offense if the person's case is not subject to further appellate review and a sentence was imposed on the person, the person received probation or community supervision, or the court deferred final disposition of the person's case.

C.S.H.B. 3555 authorizes the commissioner, if the commissioner has such grounds, to serve a removal or prohibition order, as appropriate, on the person who has been finally convicted of a felony offense. The bill requires the commissioner to also serve a copy of the order on any state bank or state trust company that the person is affiliated with at the time of service of the order. The bill establishes that such a removal or prohibition becomes effective immediately on service and continues in effect unless the order is stayed or terminated by the commissioner, set aside by the commissioner after a hearing, or stayed or vacated on appeal.

C.S.H.B. 3555 authorizes the person against whom the order is issued, not later than the 30th day after the date the order is served, to request in writing a hearing before the commissioner to show that the person's continued service to a state bank or state trust company or participation in the affairs of a state bank or state trust company does not, or is unlikely to, threaten the interests of the clients, depositors, creditors, or shareholders of the financial institution or the public confidence in the financial institution, as applicable. The bill requires the commissioner to hold the hearing not later than the 30th day after the date the request for a hearing is received, unless the party requesting the hearing requests a later date. The bill establishes that the party requesting the hearing has the burden of proof at the hearing.

C.S.H.B. 3555 authorizes the commissioner, after the hearing, to affirm, modify, or set aside, in whole or in part, the removal or prohibition order and makes an order affirming or modifying such an order immediately final for purposes of enforcement and appeal. The bill authorizes the order to be appealed as provided by applicable Texas Banking Act provisions and Texas Trust Company Act provisions relating to the appeal of a commissioner decision or order, appeal to the Finance Commission of Texas, or direct appeal to a court or appeal of a finance commission order.

C.S.H.B. 3555 applies the grounds, procedures, and effects of an enforcement proceeding brought under statutory provisions extending applicability of certain laws to bank holding companies to a bank holding company, an officer, director, or employee of a bank holding company, or a controlling shareholder or other person participating in the affairs of a bank holding company in the same manner as the grounds, procedures, and effects apply to a state bank, an officer, director, or employee of a state bank, or a controlling shareholder or other person participating in the affairs of a state bank.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3555 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. The heading to Section 31.201, Finance Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 31.201, Finance Code, is amended.	SECTION 2. Same as introduced version.
SECTION 3. Subchapter A, Chapter 35, Finance Code, is amended.	SECTION 3. Same as introduced version.

SECTION 4. Section 35.002, Finance Code, is amended.

SECTION 5. Subchapter A, Chapter 35, Finance Code, is amended by adding Section 35.0035 to read as follows:

Sec. 35.0035. REMOVAL OR PROHIBITION ORDERS IN RESPONSE TO CERTAIN CRIMINAL OFFENSES.

(a) For purposes of this section, a person is considered to have been finally convicted of an offense if the person's case is not subject to further appellate review and:

- (1) a sentence was imposed on the person;
- (2) the person received probation or community supervision, including deferred adjudication community supervision; or
- (3) the court deferred final disposition of the person's case.

(b) The banking commissioner has grounds to remove or prohibit a present or former officer, director, or employee of a state bank from office or employment in, or prohibit a controlling shareholder or other person participating in the affairs of a state bank from further participation in the affairs of, a state bank or any other entity chartered, registered, permitted, or licensed by the banking commissioner if the person has been finally convicted of a felony offense involving:

- (1) a bank or other financial institution;
- (2) dishonesty; or
- (3) breach of trust.

(c) If the banking commissioner has grounds for action under Subsection (b), the banking commissioner may serve a removal or prohibition order, as appropriate, on the person who has been finally convicted of a felony offense. The banking commissioner shall also serve a copy of the order on any state bank that the person is affiliated with at the time of service of the order.

(d) An order issued under this section becomes effective immediately on service and continues in effect unless the order is:

- (1) stayed or terminated by the banking commissioner;
- (2) set aside by the banking commissioner after a hearing; or
- (3) stayed or vacated on appeal.

(e) Not later than the 30th day after the date an order is issued under this section, the person against whom the order is issued may request in writing a hearing before the banking commissioner to show that the

SECTION 4. Same as introduced version.

SECTION 5. Subchapter A, Chapter 35, Finance Code, is amended by adding Section 35.0035 to read as follows:

Sec. 35.0035. REMOVAL OR PROHIBITION ORDERS IN RESPONSE TO CERTAIN CRIMINAL OFFENSES.

(a) For purposes of this section, a person is considered to have been finally convicted of an offense if the person's case is not subject to further appellate review and:

- (1) a sentence was imposed on the person;
- (2) the person received probation or community supervision, including deferred adjudication community supervision; or
- (3) the court deferred final disposition of the person's case.

(b) The banking commissioner has grounds to remove or prohibit a present or former officer, director, or employee of a state bank from office or employment in, or prohibit a controlling shareholder or other person participating in the affairs of a state bank from further participation in the affairs of, a state bank or any other entity chartered, registered, permitted, or licensed by the banking commissioner if the person has been finally convicted of a felony offense involving:

- (1) a bank or other financial institution;
- (2) dishonesty; or
- (3) breach of trust.

(c) If the banking commissioner has grounds for action under Subsection (b), the banking commissioner may serve a removal or prohibition order, as appropriate, on the person who has been finally convicted of a felony offense. The banking commissioner shall also serve a copy of the order on any state bank that the person is affiliated with at the time of service of the order.

(d) An order issued under this section becomes effective immediately on service and continues in effect unless the order is:

- (1) stayed or terminated by the banking commissioner;
- (2) set aside by the banking commissioner after a hearing; or
- (3) stayed or vacated on appeal.

(e) Not later than the 30th day after the date an order is served under this section, the person against whom the order is issued may request in writing a hearing before the banking commissioner to show that the

person's continued service to a state bank or participation in the affairs of a state bank does not, or is unlikely to, threaten the interests of the depositors, creditors, or shareholders of the state bank or the public confidence in the state bank.

(f) Not later than the 30th day after the date the request for a hearing is received under this section, the banking **commission** shall hold the hearing, unless the party requesting the hearing requests a later date. At the hearing, the party requesting the hearing has the burden of proof.

(g) After the hearing, the banking commissioner may affirm, modify, or set aside, in whole or in part, the order. An order affirming or modifying the order is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections 31.202, 31.203, and 31.204.

SECTION 6. Subchapter B, Chapter 35, Finance Code, is amended.

SECTION 7. The heading to Section 181.201, Finance Code, is amended.

SECTION 8. Section 181.201, Finance Code, is amended.

SECTION 9. Subchapter A, Chapter 185, Finance Code, is amended.

SECTION 10. Section 185.002, Finance Code, is amended.

SECTION 11. Section 185.003(a), Finance Code, is amended.

SECTION 12. Subchapter A, Chapter 185, Finance Code, is amended by adding Section 185.0035 to read as follows:

Sec. 185.0035. REMOVAL OR PROHIBITION ORDERS IN RESPONSE TO CERTAIN CRIMINAL OFFENSES.

(a) For purposes of this section, a person is considered to have been finally convicted of an offense if the person's case is not subject to further appellate review and:

- (1) a sentence was imposed on the person;
- (2) the person received probation or community supervision, including deferred adjudication community supervision; or
- (3) the court deferred final disposition of the person's case.

person's continued service to a state bank or participation in the affairs of a state bank does not, or is unlikely to, threaten the interests of the depositors, creditors, or shareholders of the state bank or the public confidence in the state bank.

(f) Not later than the 30th day after the date the request for a hearing is received under this section, the banking **commissioner** shall hold the hearing, unless the party requesting the hearing requests a later date. At the hearing, the party requesting the hearing has the burden of proof.

(g) After the hearing, the banking commissioner may affirm, modify, or set aside, in whole or in part, the order. An order affirming or modifying the order is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections 31.202, 31.203, and 31.204.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Subchapter A, Chapter 185, Finance Code, is amended by adding Section 185.0035 to read as follows:

Sec. 185.0035. REMOVAL OR PROHIBITION ORDERS IN RESPONSE TO CERTAIN CRIMINAL OFFENSES.

(a) For purposes of this section, a person is considered to have been finally convicted of an offense if the person's case is not subject to further appellate review and:

- (1) a sentence was imposed on the person;
- (2) the person received probation or community supervision, including deferred adjudication community supervision; or
- (3) the court deferred final disposition of the person's case.

(b) The banking commissioner has grounds to remove or prohibit a present or former officer, director, manager, managing participant, or employee of a state trust company from office or employment in, or prohibit a controlling shareholder or participant or other person participating in the affairs of a state trust company from further participation in the affairs of, the state trust company or any other entity chartered, registered, permitted, or licensed by the banking commissioner if the person has been finally convicted of a felony offense involving:

(1) a financial institution, as defined by Section 201.101;

(2) dishonesty; or

(3) breach of trust.

(c) If the banking commissioner has grounds for action under Subsection (b), the banking commissioner may serve a removal or prohibition order, as appropriate, on the person who has been finally convicted of a felony offense. The banking commissioner shall also serve a copy of the order on any state trust company that the person is affiliated with at the time of service of the order.

(d) An order issued under this section becomes effective immediately on service and continues in effect unless the order is:

(1) stayed or terminated by the banking commissioner;

(2) set aside by the banking commissioner after a hearing; or

(3) stayed or vacated on appeal.

(e) Not later than the 30th day after the date an order is issued under this section, the person against whom the order is issued may request in writing a hearing before the banking commissioner to show that the person's continued service to a state trust company or participation in the affairs of a state trust company does not, or is unlikely to, threaten the interests of the clients, depositors, creditors, or shareholders of the state trust company or the public confidence in the state trust company.

(f) Not later than the 30th day after the date a request for a hearing is received under this section, the banking commissioner shall hold the hearing, unless the party requesting the hearing requests a later date. At the hearing, the party requesting the hearing has the burden of proof.

(g) After the hearing, the banking

(b) The banking commissioner has grounds to remove or prohibit a present or former officer, director, manager, managing participant, or employee of a state trust company from office or employment in, or prohibit a controlling shareholder or participant or other person participating in the affairs of a state trust company from further participation in the affairs of, the state trust company or any other entity chartered, registered, permitted, or licensed by the banking commissioner if the person has been finally convicted of a felony offense involving:

(1) a financial institution, as defined by Section 201.101;

(2) dishonesty; or

(3) breach of trust.

(c) If the banking commissioner has grounds for action under Subsection (b), the banking commissioner may serve a removal or prohibition order, as appropriate, on the person who has been finally convicted of a felony offense. The banking commissioner shall also serve a copy of the order on any state trust company that the person is affiliated with at the time of service of the order.

(d) An order issued under this section becomes effective immediately on service and continues in effect unless the order is:

(1) stayed or terminated by the banking commissioner;

(2) set aside by the banking commissioner after a hearing; or

(3) stayed or vacated on appeal.

(e) Not later than the 30th day after the date an order is served under this section, the person against whom the order is issued may request in writing a hearing before the banking commissioner to show that the person's continued service to a state trust company or participation in the affairs of a state trust company does not, or is unlikely to, threaten the interests of the clients, depositors, creditors, or shareholders of the state trust company or the public confidence in the state trust company.

(f) Not later than the 30th day after the date a request for a hearing is received under this section, the banking commissioner shall hold the hearing, unless the party requesting the hearing requests a later date. At the hearing, the party requesting the hearing has the burden of proof.

(g) After the hearing, the banking

commissioner may affirm, modify, or set aside, in whole or in part, the order. An order affirming or modifying the order is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections 181.202, 181.203, and 181.204.

SECTION 13. Subchapter B, Chapter 185, Finance Code, is amended.

SECTION 14. Section 202.005, Finance Code, is amended.

SECTION 15. This Act takes effect September 1, 2015.

commissioner may affirm, modify, or set aside, in whole or in part, the order. An order affirming or modifying the order is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections 181.202, 181.203, and 181.204.

SECTION 13. Same as introduced version.

SECTION 14. Same as introduced version.

SECTION 15. Same as introduced version.