

## **BILL ANALYSIS**

C.S.H.B. 2822  
By: Dean  
Investments & Financial Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties assert the need to modernize and clarify state law regulating banks and trust companies both to account for innovations in electronic banking and to align with federal law. C.S.H.B. 2822 seeks to implement these changes.

### **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. 2822 amends the Finance Code to replace references to a third-party contractor in provisions of the Texas Banking Act relating to the regulation and examination of bank-related entities by the banking commissioner of Texas with references to a third-party service provider, defined by the bill for purposes of that act as a legal entity that provides data processing services, performs activities in support of the provision of financial services, provides Internet-related services, or performs activities relating to the business of banking. The bill replaces the banking commissioner's authority to regulate and examine the performance of bank services on behalf of a state bank by a third-party contractor, other than a national bank, to the same extent as if the services or activities were performed by a state bank on its own premises with the authority to regulate and examine the 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 state bank or state bank affiliate to the same such extent.

C.S.H.B. 2822 makes information, other than information in a published statement or in the public portion of a call report or profit and loss statement, directly or indirectly obtained by the Texas Department of Banking in any manner concerning the financial condition or business affairs of an affiliate of a third-party service provider of a financial institution confidential and prohibits the disclosure of such information by the banking commissioner or a department employee, but authorizes the banking commissioner to disclose to a state bank information about an affiliate or third-party service provider of the state bank.

C.S.H.B. 2822 prohibits a person from serving as an officer of a state bank if the person is the subject of a final and enforceable removal or prohibition order issued by the banking commissioner or by another state, federal, or foreign financial institution regulatory agency or if the person has been convicted of a felony, unless the banking commissioner consents otherwise

in writing. The bill prohibits a person subject to such an order from serving as a director, officer, or employee of a holding company of a state bank without the prior written approval of the banking commissioner. The bill authorizes the banking commissioner to terminate an order appointing a supervisor over a state bank due to the bank being in hazardous condition at any time.

C.S.H.B. 2822 replaces references to a third-party contractor in provisions of the Texas Trust Company Act relating to the regulation and examination of trust-company-related entities by the banking commissioner with references to a third-party service provider, defined by the bill for purposes of that act as a legal entity that provides data processing services, performs activities in support of the provision of financial services, provides Internet-related services, or performs activities relating to the trust business. The bill replaces the banking commissioner's authority to regulate and examine the performance of services or activities performed on behalf of a state trust company by a third-party contractor to the same extent as if the services or activities were performed by a state trust company on its own premises with the authority to regulate and examine the 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 state trust company or state trust company affiliate to the same such extent.

C.S.H.B. 2822 makes information, other than the public portions of a report of condition or income statement, directly or indirectly obtained by the Texas Department of Banking in any manner concerning the financial condition or business affairs of an affiliate of a third-party service provider of a state trust company confidential and prohibits the disclosure of such information by the banking commissioner or a department employee but authorizes the banking commissioner to disclose to a state trust company information about an affiliate or third-party service provider of the state trust company. The bill establishes that a company does not engage in the trust business in a manner requiring a state charter by acting as a trustee or custodian approved by the Internal Revenue Service under a federal regulation of an individual retirement account described by the federal Internal Revenue Code of 1986.

C.S.H.B. 2822 prohibits a person from serving as an officer of a state trust company if the person is the subject of a final and enforceable removal or prohibition order issued by the banking commissioner or by another state, federal, or foreign financial institution regulatory agency; if the person has been convicted of a felony; or if the person has violated, with respect to a trust under which the state trust company has fiduciary responsibility, statutory provisions relating to the loaning of trust funds or the purchase or sale of trust property by the trustee, and the violation has not been corrected, unless the banking commissioner consents otherwise in writing. The bill prohibits a person subject to such an order from serving as a director, officer, or employee of a holding company of a state bank without the prior written approval of the banking commissioner. The bill authorizes the banking commissioner to terminate an order appointing a supervisor over a state trust company due to the company being in hazardous condition at any time.

#### **EFFECTIVE DATE**

September 1, 2017.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2822 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. Section 31.002, Finance	SECTION 1. Substantially the same as

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Code, is amended.

SECTION 2. Sections 31.107(a) and (b), Finance Code, are amended.

SECTION 3. Section 31.301(a), Finance Code, is amended.

SECTION 4. Subchapter D, Chapter 31, Finance Code, is amended.

SECTION 5. Section 33.106, Finance Code, is amended.

SECTION 6. Section 35.007(a), Finance Code, is amended.

SECTION 7. Section 35.101, Finance Code, is amended.

SECTION 8. Section 35.206(a), Finance Code, is amended.

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

(47-b) "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 trust business.

introduced version.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Substantially the same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Section 181.002(a), Finance Code, is amended by adding Subdivision (47-b) and amending Subdivision (49) to read as follows:

(47-b) "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 trust business.

(49) "Trust business" means the business of a company holding itself out to the public as a fiduciary for hire or compensation to hold or administer accounts. The term includes:  
(A) the business of a trustee or custodian of an individual retirement account described by Section 408(a), Internal Revenue Code of 1986; and

(B) the business of an administrator or servicer of individual retirement accounts described by Section 408(a), Internal Revenue Code of 1986, who possesses or

controls any assets, including cash, of those accounts and who makes the administrator's or servicer's services available to the public for hire or compensation.

SECTION 10. Section 181.106, Finance Code, is amended.

SECTION 10. Same as introduced version.

SECTION 11. Section 181.301(a), Finance Code, is amended.

SECTION 11. Same as introduced version.

SECTION 12. Subchapter D, Chapter 181, Finance Code, is amended.

SECTION 12. Same as introduced version.

No equivalent provision.

SECTION 13. Section 182.021, Finance Code, is amended to read as follows:

Sec. 182.021. **ACTIVITIES NOT REQUIRING CHARTER.** Subject to Subchapter C, Chapter 187, a company does not engage in the trust business in a manner requiring a state charter by:

- (1) acting in a manner authorized by law and in the scope of authority as an agent of a trust institution;
- (2) rendering a service customarily performed as an attorney in a manner approved and authorized by the Supreme Court of Texas or State Bar of Texas;
- (3) acting as trustee under a deed of trust made only as security for the payment of money or for the performance of another act;
- (4) conducting business as a trust institution if the exercise of fiduciary powers in this state by the trust institution is not otherwise prohibited by law;
- (5) engaging in a business regulated by the Office of Consumer Credit Commissioner, except as limited by rules adopted by the finance commission;
- (6) 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 Texas Real Estate Commission;
- (7) engaging in a securities transaction or providing an investment advisory service as a licensed and registered dealer, salesman, or advisor to the extent that the activity is regulated by the State Securities Board or the Securities and Exchange Commission;
- (8) engaging in the sale and administration of an insurance product by an insurance company or agent authorized or licensed by the Texas Department of Insurance to the

extent that the activity is regulated by the Texas Department of Insurance;

(9) engaging in the lawful sale of prepaid funeral benefits under a permit issued by the banking commissioner under Chapter 154;

(10) engaging in the lawful business of a perpetual care cemetery corporation under Chapter 712, Health and Safety Code;

(11) engaging as a principal in the money services business under a license issued by the banking commissioner under Chapter 151;

(12) acting as trustee under a voting trust as provided by Section 6.251, Business Organizations Code;

(13) acting as trustee by a public, private, or independent institution of higher education or a university system, as defined by Section 61.003, Education Code, including an affiliated foundation or corporation of such an institution or system acting as trustee as provided by the Education Code;

(14) engaging in another activity expressly excluded from the application of this subtitle by rule of the finance commission;

(15) rendering services customarily performed by a certified accountant in a manner authorized by the Texas State Board of Public Accountancy;

(16) serving as trustee of a charitable trust as provided by Section 2.106, Business Organizations Code;

(17) performing escrow or settlement services if licensed or authorized under Title 11, Insurance Code;

(18) acting as a qualified intermediary in a tax deferred exchange under Section 1031, Internal Revenue Code of 1986, and applicable regulations; ~~[or]~~

(19) providing permitted services at a trust representative office established in this state pursuant to Subchapter C, Chapter 187; or

(20) acting as a trustee or custodian approved by the Internal Revenue Service under 26 C.F.R. Section 1.408-2(e) of an individual retirement account described by Section 408(a), Internal Revenue Code of 1986.

SECTION 13. Section 183.106(a), Finance Code, is amended.

SECTION 14. Same as introduced version.

SECTION 14. Section 185.007(a), Finance Code, is amended.

SECTION 15. Same as introduced version.

SECTION 15. Section 185.101, Finance Code, is amended.

SECTION 16. Same as introduced version.

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

SECTION 17. Same as introduced version.