

## **BILL ANALYSIS**

C.S.S.B. 1401  
By: Campbell  
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.S.B. 1401 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.S.B. 1401 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 person who performs activities relating to the business of banking on behalf of a depository institution for the depository institution's customers or on behalf of another person directly engaged in providing financial services for the person's customers, including a person who provides data processing services, performs activities in support of the provision of financial services, or provides Internet-related services but excluding a provider of an interactive computer service or a general audience Internet or communications platform except to the extent that the service or platform is specially designed or adapted for the business of banking and 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. The bill authorizes the banking commissioner, if in the preceding 24 months a third-party service provider or affiliate under the Texas Banking Act has been examined by a federal or state financial services regulatory agency or by a member agency of the Federal Financial Institutions Examination Council or its successor agency, to accept the results of that examination instead of conducting the banking commissioner's own examination of the third-party service provider or affiliate. The bill prohibits such authorization from being construed as limiting or restricting the banking commissioner from participating in an examination of such a third-party service provider or affiliate conducted by another such examining entity.

C.S.S.B. 1401 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.S.B. 1401 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 at any time an order appointing a supervisor over a state bank due to the bank being in hazardous condition.

C.S.S.B. 1401 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 person who performs activities relating to the trust business on behalf of a trust institution for the trust institution's customers or on behalf of another person directly engaged in providing financial services for the person's customers, including a person who provides data processing services, performs activities in support of the provision of financial services, or provides Internet-related services but excluding a provider of an interactive computer service or a general audience Internet or communications platform except to the extent that the service or platform is specially designed or adapted for the trust business and activities relating to the trust business. The bill specifies that the term "trust business" includes the business of a trustee or custodian of an individual retirement account described by a specified provision of the Internal Revenue Code of 1986 and the business of an administrator or servicer of individual retirement accounts so described by that same provision 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. 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. The bill authorizes the banking commissioner, as an alternative to collecting a fee to cover the cost of the examination from the examined third-party service provider or affiliate in connection with each examination, to collect the fee from the state trust companies that use the examined third-party service provider.

C.S.S.B. 1401 authorizes the banking commissioner, if in the preceding 24 months a third-party service provider or affiliate under the Texas Trust Company Act has been examined by a federal or state financial services regulatory agency or by a member agency of the Federal Financial Institutions Examination Council or its successor agency, to accept the results of that examination instead of conducting the banking commissioner's own examination of the third-party service provider or affiliate. The bill prohibits such authorization from being construed as limiting or restricting the banking commissioner from participating in an examination of such a third-party service provider or affiliate conducted by another such examining entity.

C.S.S.B. 1401 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 specified federal regulation of an individual retirement account described by a specified provision of the Internal Revenue Code of 1986.

C.S.S.B. 1401 prohibits a person, unless the banking commissioner consents otherwise in writing, 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 loan of trust funds or the purchase or sale of trust property by the trustee, and the violation has not been corrected. 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 at any time an order appointing a supervisor over a state trust company due to the company being in hazardous condition.

### **EFFECTIVE DATE**

September 1, 2017.

### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 1401 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

#### SENATE ENGROSSED

SECTION 1. Section 31.002(a), 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

#### HOUSE COMMITTEE SUBSTITUTE

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

(55-a) "Third-party service provider" means a person who performs activities relating to the business of banking on behalf of a depository institution for the depository institution's customers or on behalf of another person directly engaged in providing financial services for the person's customers. The term:

- (A) includes a person who:
  - (i) provides data processing services;
  - (ii) performs activities in support of the provision of financial services, including lending, transferring funds, fiduciary activities, trading activities, and deposit taking activities; or
  - (iii) 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].

electronic bill payments, developing and maintaining mobile applications, system and software development and maintenance, and security monitoring; and

(B) does not include a provider of an interactive computer service or a general audience Internet or communications platform, except to the extent that the service or platform is specially designed or adapted for the business of banking and activities relating to the business of banking.

SECTION 2. Section 31.107, Finance Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) 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].

(d) To promote regulatory efficiency, if, in the preceding 24 months, a third-party service provider or affiliate has been examined by a federal or state financial services regulatory agency or by a member agency of the Federal Financial Institutions Examination Council, or its successor agency, the banking commissioner may accept the results of that examination instead of conducting the banking commissioner's own examination of the third-party service provider or affiliate. Nothing in this subsection shall be construed as limiting or restricting the banking commissioner from participating in an examination of a third-party service

provider or affiliate conducted by a federal or state financial services regulatory agency or by a member agency of the Federal Financial Institutions Examination Council, or its successor agency.

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

SECTION 3. Same as engrossed version.

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

SECTION 4. Same as engrossed version.

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

SECTION 5. Same as engrossed version.

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

SECTION 6. Same as engrossed version.

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

SECTION 7. Same as engrossed version.

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

SECTION 8. Same as engrossed version.

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

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:

(47-b) "Third-party service provider" means a person who performs activities relating to the trust business on behalf of a trust institution for the trust institution's customers or on behalf of another person directly engaged in providing financial services for the person's customers. The term:

(A) provides data processing services;

(A) includes a person who:

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

(i) provides data processing services;

(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

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

(D) performs activities relating to the trust business.

(iii) 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; and

(B) does not include a provider of an interactive computer service or a general audience Internet or communications platform, except to the extent that the service or platform is specially designed or adapted for the trust business and activities

(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 to read as follows:

Sec. 181.106. REGULATION AND EXAMINATION OF RELATED ENTITIES. (a) The banking commissioner may regulate and examine, 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.

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 to read as follows:

Sec. 181.106. REGULATION AND EXAMINATION OF RELATED ENTITIES. (a) The banking commissioner may regulate and examine, 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.

(c) To promote regulatory efficiency, if, in the preceding 24 months, a third-party service provider or affiliate has been examined by a federal or state financial services regulatory agency or by a member agency of the Federal Financial Institutions Examination Council, or its successor agency, the banking commissioner may accept the results of that examination

instead of conducting the banking commissioner's own examination of the third-party service provider or affiliate. Nothing in this subsection shall be construed as limiting or restricting the banking commissioner from participating in an examination of a third-party service provider or affiliate conducted by a federal or state financial services regulatory agency or by a member agency of the Federal Financial Institutions Examination Council, or its successor agency.

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

SECTION 11. Same as engrossed version.

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

SECTION 12. Same as engrossed version.

SECTION 13. Section 182.021, Finance Code, is amended.

SECTION 13. Same as engrossed version.

SECTION 14. Section 183.106(a), Finance Code, is amended.

SECTION 14. Same as engrossed version.

SECTION 15. Section 185.007(a), Finance Code, is amended.

SECTION 15. Same as engrossed version.

SECTION 16. Section 185.101, Finance Code, is amended.

SECTION 16. Same as engrossed version.

SECTION 17. This Act takes effect September 1, 2017.

SECTION 17. Same as engrossed version.