

## **BILL ANALYSIS**

Senate Research Center  
84R15962 EES-F

H.B. 3555  
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Business & Commerce  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Chapter 31, Subchapter C, of the Finance Code concerns administrative procedures governing Texas Department of Banking contested cases. A change is proposed to clarify the banking commissioner's authority to dispose of contested cases informally or by default. Chapter 35 of the Finance Code authorizes the banking commissioner to take various enforcement actions against state banks. Changes are proposed to clarify that cease and desist orders may require affirmative action, to extend enforcement measures to cover subsidiaries of state banks, and to provide for automatic removal or prohibition from banking of a person convicted of certain felonies.

Chapters 181 and 185 of the Finance Code govern state trust companies and the provisions mirror those in Chapters 31 and 35 for state banks. Changes corresponding to those proposed for Chapters 31 and 35 are proposed to Chapters 181 and 185.

Chapter 202 governs bank holding companies that control Texas banks. A change is proposed to clarify that enforcement measures apply to such bank holding companies to the same extent they apply to state banks.

H.B. 3555 amends current law relating to certain administrative procedures and enforcement authority relating to state banks, state trust companies, and bank holding companies.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Section 31.201, Finance Code, to read as follows:

Sec. 31.201. BANKING COMMISSIONER HEARING; INFORMAL DISPOSITION.

SECTION 2. Amends Section 31.201, Finance Code, by adding Subsection (d), to authorize the banking commissioner to informally dispose of a matter within the jurisdiction of and before the banking commissioner by consent order, agreed settlement, or default.

SECTION 3. Amends Subchapter A, Chapter 35, Finance Code, by adding Section 35.0001, as follows:

Sec. 35.0001. APPLICABILITY TO BANK SUBSIDIARIES. Provides that this subchapter applies to a subsidiary of a state bank, a present or former officer, director, or employee of a subsidiary, or a controlling shareholder or other person participating in the affairs of a subsidiary in the same manner as the subchapter applies to a state bank, a present or former officer, director, or employee of a state bank, or a controlling shareholder or other person participating in the affairs of a state bank.

SECTION 4. Amends Section 35.002, Finance Code, by adding Subsection (b-1), to provide that a proposed cease and desist order may require an officer, employee, or director of a state

bank, or the bank 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 banking commissioner determines is appropriate.

SECTION 5. Amends Subchapter A, Chapter 35, Finance Code, by adding Section 35.0035, as follows:

Sec. 35.0035. REMOVAL OR PROHIBITION ORDERS IN RESPONSE TO CERTAIN CRIMINAL OFFENSES. (a) Provides that a person, for purposes of this section, 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) Provides that 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) Authorizes the banking commissioner, if the banking commissioner has grounds for action under Subsection (b), to serve a removal or prohibition order, as appropriate, on the person who has been finally convicted of a felony offense. Requires the banking commissioner to 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) Provides that 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) Authorizes the person against whom the order is issued, not later than the 30th day after the date an order is served under this section, to 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) Requires the banking commissioner, not later than the 30th day after the date the request for a hearing is received under this section, to hold the hearing, unless the party requesting the hearing requests a later date. Provides that the party requesting the hearing, at the hearing, has the burden of proof.

(g) Authorizes the banking commissioner, after the hearing, to affirm, modify, or set aside, in whole or in part, the order. Provides that an order affirming or modifying the order is immediately final for purposes of enforcement and appeal. Provides that the order may be appealed as provided by Sections 31.202 (Appeal of Banking Commissioner Decision or Order), 31.203 (Appeal to Finance Commission), and 31.204 (Direct Appeal to Court or Appeal of Finance Commission Order).

SECTION 6. Amends Subchapter B, Chapter 35, Finance Code, by adding Section 35.1001, as follows:

Sec. 35.1001. APPLICABILITY TO BANK SUBSIDIARIES. Provides that this subchapter applies to a subsidiary of a state bank, a present or former officer, director, or employee of a subsidiary, or a controlling shareholder or other person participating in the affairs of a subsidiary in the same manner as the subchapter applies to a state bank, a present or former officer, director, or employee of a state bank, or a controlling shareholder or other person participating in the affairs of a state bank.

SECTION 7. Amends the heading to Section 181.201, Finance Code, to read as follows:

Sec. 181.201. BANKING COMMISSIONER HEARING; INFORMAL DISPOSITION.

SECTION 8. Amends Section 181.201, Finance Code, by adding Subsection (d), to authorize the banking commissioner to informally dispose of a matter within the jurisdiction of and before the banking commissioner by consent order, agreed settlement, or default.

SECTION 9. Amends Subchapter A, Chapter 185, Finance Code, by adding Section 185.0001, as follows:

Sec. 185.0001. APPLICABILITY TO STATE TRUST COMPANY SUBSIDIARIES. Provides that this subchapter applies to a subsidiary of a state trust company, a present or former officer, director, manager, managing participant, or employee of a subsidiary, or a controlling shareholder or other person participating in the affairs of a subsidiary in the same manner as the subchapter applies to a state trust company, a present or former officer, director, manager, managing participant, or employee of a state trust company, or a controlling shareholder or other person participating in the affairs of a state trust company.

SECTION 10. Amends Section 185.002, Finance Code, by adding Subsection (b-1), to provide that a proposed cease and desist order may require an officer, employee, director, manager, or managing participant of a state trust company, or the state trust company 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 banking commissioner determines is appropriate.

SECTION 11. Amends Section 185.003(a), Finance Code, as follows:

(a) Provides that 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 banking commissioner determines from examination or other credible evidence that:

(1)-(3) Makes no change to these subdivisions.

SECTION 12. Amends Subchapter A, Chapter 185, Finance Code, by adding Section 185.0035, as follows:

Sec. 185.0035. REMOVAL OR PROHIBITION ORDERS IN RESPONSE TO CERTAIN CRIMINAL OFFENSES. (a) Provides that a person, for purposes of this section, 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) Provides that 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 (Definitions);
- (2) dishonesty; or
- (3) breach of trust.

(c) Authorizes the banking commissioner, if the banking commissioner has grounds for action under Subsection (b), to serve a removal or prohibition order, as appropriate, on the person who has been finally convicted of a felony offense. Requires the banking commissioner to 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) Provides that 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) Authorizes the person against whom the order is issued, not later than the 30th day after the date an order is served under this section, to 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) Requires the banking commissioner, not later than the 30th day after the date a request for a hearing is received under this section, to hold the hearing, unless the party requesting the hearing requests a later date. Provides that, at the hearing, the party requesting the hearing has the burden of proof.

(g) Authorizes the banking commissioner, after the hearing, to affirm, modify, or set aside, in whole or in part, the order. Provides that an order affirming or modifying the order is immediately final for purposes of enforcement and appeal. Provides that the order may be appealed as provided by Sections 181.202 (Appeal

of Banking Commissioner Decision or Order), 181.203 (Appeal to Finance Commission), and 181.204 (Direct Appeal to Court or Appeal of Finance Commission Order).

SECTION 13. Amends Subchapter B, Chapter 185, Finance Code, by adding Section 185.1001, as follows:

Sec. 185.1001. **APPLICABILITY TO STATE TRUST COMPANY SUBSIDIARIES.** Provides that this subchapter applies to a subsidiary of a state trust company, a present or former officer, director, manager, managing participant, or employee of a subsidiary, or a controlling shareholder or other person participating in the affairs of a subsidiary in the same manner as the subchapter applies to a state trust company, a present or former officer, director, manager, managing participant, or employee of a state trust company, or a controlling shareholder or other person participating in the affairs of a state trust company.

SECTION 14. Amends Section 202.005, Finance Code, by adding Subsection (a-1), to provide that the grounds, procedures, and effects of an enforcement proceeding brought under this section apply 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.

SECTION 15. Effective date: September 1, 2015.