

BILL ANALYSIS

Senate Research Center

S.B. 1823
By: Campbell
Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties report a need to implement certain regulatory improvements and clarifications in the law regarding state-chartered banks and trust companies, including third-party service providers that work with banks and trust companies. SB 1823 seeks to provide such improvements and clarifications by making technical corrections, eliminating potential ambiguities, enhancing confidentiality of investigatory subpoenas, clarifying the regulatory jurisdiction and authority of the banking commissioner, and narrowing exemptions from regulatory review of certain bank acquisitions. (Original Author's/Sponsor's Statement of Intent)

S.B. 1823 amends current law relating to the regulation of state banks, state trust companies, and third-party service providers of state banks and state trust 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 Section 31.002(a)(55-a), Finance Code, to include a person who, for the purpose of furnishing to third parties reports indicating a person's creditworthiness, credit standing, or credit capacity, regularly engages in the practice of assembling or evaluating, and maintaining, public record information and credit account information from persons who furnish that information regularly and in the ordinary course of business, among the meanings of the term "third-party service provider" and to make nonsubstantive changes.

SECTION 2. Amends Section 31.105, Finance Code, by adding Subsections (f) and (g), as follows:

(f) Authorizes a subpoena issued under this section (Examination Required), except to the extent disclosure is necessary to locate and produce responsive records or obtain legal representation and subject to Subsection (g), to provide that the person to whom the subpoena is directed or any person who comes into receipt of the subpoena is prohibited from disclosing certain information regarding the subpoena.

(g) Authorizes a subpoena issued under this section to prohibit the disclosure of information described by Subsection (f) only if the banking commissioner finds, and the subpoena states, that the subpoena, the examination, or the records relate to an ongoing investigation and that the disclosure could significantly impede or jeopardize the investigation.

SECTION 3. Amends Section 31.107, Finance Code, by adding Subsection (e), as follows:

(e) Provides that a third-party service provider that refuses to submit to examination or to pay an assessed fee for examination under this section (Regulation and Examination of Related Entities) is subject to an enforcement action under Chapter 35 (Enforcement Actions). Authorizes the banking commissioner, with respect to a third-party service provider's refusal to submit to examination, to notify all state banks of the refusal and

warn that continued use of the third-party service provider may constitute an unsafe and unsound banking practice.

SECTION 4. Amends Section 33.005, Finance Code, as follows:

Sec. 33.005. EXEMPTIONS. Establishes that the following acquisitions are exempt from Section 33.001 (Acquisition of Control):

(1)–(3) makes no changes to these subdivisions;

(4) a transaction subject to Chapter 202 (Bank Holding Companies) if:

(A) the acquiring bank holding company currently owns and controls a state bank; or

(B) the post-transaction controlling person has previously complied with and received approval as a controlling person under this subchapter (Transfer of Ownership Interest) or is identified as the controlling person in a merger or other acquisition-related application filed with the banking commissioner concurrently with the submission required by Section 202.001 (Acquisition of Bank or Bank Holding Company); and

(5) makes no changes to this subdivision.

SECTION 5. Amends Section 35.010(c), Finance Code, to remove the minimum amount the banking commissioner is authorized to impose as an administrative penalty against a bank or person other than a bank in certain circumstances.

SECTION 6. Amends Section 35.203, Finance Code, by adding Subsections (h) and (i), as follows:

(h) Authorizes a subpoena issued under this section (Subpoena Authority), except to the extent disclosure is necessary to locate and produce responsive records or obtain legal representation and subject to Subsection (i), to provide that the person to whom the subpoena is directed or any person who comes into receipt of the subpoena is prohibited from disclosing certain information regarding the subpoena.

(i) Authorizes a subpoena issued under this section to prohibit the disclosure of information described by Subsection (h) only if the banking commissioner finds, and the subpoena states, that the subpoena, the examination, or the records relate to an ongoing investigation and that the disclosure could significantly impede or jeopardize the investigation.

SECTION 7. Amends Sections 181.002(a)(47-b) and (49), Finance Code, as follows:

(47-b) Includes a person who, for the purpose of furnishing to third parties reports indicating a person's creditworthiness, credit standing, or credit capacity, regularly engages in the practice of assembling or evaluating, and maintaining, public record information and credit account information from persons who furnish that information regularly and in the ordinary course of business, among the meanings of the term "third-party service provider" for purposes of this section (Definitions). Makes nonsubstantive changes.

(49) Includes the business of an administrator or servicer of individual retirement accounts described by Section 408(a), Internal Revenue Code of 1986, who makes the administrator's or servicer's services available to the public for hire or compensation, rather than 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, among the meanings of the term "trust business" for purposes of this section.

SECTION 8. Amends Sections 181.104, Finance Code, by adding Subsections (h) and (i), as follows:

(h) Authorizes a subpoena issued under this section (Examination Requirement), except to the extent disclosure is necessary to locate and produce responsive records or obtain legal representation and subject to Subsection (i), to provide that the person to whom the subpoena is directed or any person who comes into receipt of the subpoena is prohibited from disclosing certain information regarding the subpoena.

(i) Authorizes a subpoena issued under this section to prohibit the disclosure of information described by Subsection (h) only if the banking commissioner finds, and the subpoena states, that the subpoena, the examination, or the records relate to an ongoing investigation and the disclosure could significantly impede or jeopardize the investigation.

SECTION 9. Amends Section 181.106, Finance Code, by adding Subsection (d), as follows:

(d) Provides that a third-party service provider that refuses to submit to examination or to pay an assessed fee for examination under this section (Regulation and Examination of Related Entities) is subject to an enforcement action under Chapter 185 (Enforcement Actions). Authorizes the banking commissioner, with respect to a third-party service provider's refusal to submit to examination, to notify all state trust companies of the refusal and warn that continued use of the third-party service provider may constitute an unsafe and unsound fiduciary practice

SECTION 10. Amends Sections 185.010(c), Finance Code, to remove the minimum amount the banking commissioner is authorized to impose as an administrative penalty against a state trust company or person other than a state trust company in certain circumstances.

SECTION 11. Amends Section 185.202, Finance Code, by adding Subsections (h) and (i), as follows:

(h) Authorizes a subpoena issued under this section (Subpoena Authority), except to the extent disclosure is necessary to locate and produce responsive records or obtain legal representation and subject to Subsection (i), to provide that the person to whom the subpoena is directed or any person who comes into receipt of the subpoena is prohibited from disclosing certain information regarding the subpoena.

(i) Authorizes a subpoena issued under this section to prohibit the disclosure of information described by Subsection (h) only if the banking commissioner finds, and the subpoena states, that the subpoena, the examination, or the records relate to an ongoing investigation and that the disclosure could significantly impede or jeopardize the investigation.

SECTION 12. Effective date: September 1, 2019.