

By: Lambert

H.B. No. 3574

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of state banks.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 31.002(a)(15), Finance Code, is amended to read as follows:

(15) "Deposit" means the establishment of a debtor-creditor relationship represented by the agreement of the deposit debtor to act as a holding, paying, or disbursing agent for the deposit creditor. The term:

(A) includes:

(i) an unpaid balance of money that is received by the deposit debtor in the usual course of business in exchange for conditional or unconditional credit to a commercial, checking, savings, or time account of the deposit creditor or the creditor's designee, or that is evidenced by a certificate of deposit or similar instrument, a certified check or draft drawn against a deposit account, or a letter of credit or traveler's check on which the deposit debtor is primarily liable, but excluding an obligation arising under Chapter 151 [~~152~~];

(ii) money or credit given for money received by the deposit debtor in the usual course of business for a special purpose, including money:

(a) held as escrow money, as security for an obligation due to the deposit debtor or another person, or as

1 security for a loan;

2 (b) left with a deposit debtor by a
3 deposit creditor to meet maturing obligations that are not yet due;
4 and

5 (c) held by the deposit debtor to meet
6 an acceptance or letter of credit;

7 (iii) an outstanding draft, cashier's
8 check, money order, or other officer's check issued by the deposit
9 debtor in the usual course of business for any purpose, including
10 payment for services, dividends, or purchases; and

11 (iv) an obligation that the finance
12 commission by rule defines as a deposit liability, except that the
13 term may not include money received for immediate application to
14 reduction of an indebtedness; and

15 (B) does not include an obligation that this
16 subtitle or finance commission rule determines not to be a deposit
17 liability.

18 SECTION 2. Section 31.005(b), Finance Code, is amended to
19 read as follows:

20 (b) Subsection (a) does not apply to a federally insured
21 depository institution [~~or other entity~~] organized under the laws
22 of this state, another state, the United States, or a foreign
23 sovereign state to the extent that the depository institution or
24 other entity is:

25 (1) authorized under its charter or the laws of this
26 state or the United States to use a term, word, character, ideogram,
27 phonogram, or phrase prohibited by Subsection (a); and

1 (2) authorized by the laws of this state or the United
2 States to conduct the activities in which it is engaged in this
3 state.

4 SECTION 3. Section 31.105, Finance Code, is amended by
5 adding Subsection (c-2) to read as follows:

6 (c-2) If a person currently serving as an officer, director,
7 employee, controlling shareholder, or other position participating
8 in the affairs of a state bank refuses to comply with a subpoena,
9 the banking commissioner may issue an order on an emergency basis
10 removing the person from the person's position and prohibiting the
11 person from participating in the affairs of the state bank or any
12 other entity chartered, registered, permitted, or licensed by the
13 banking commissioner until the person complies with the subpoena.

14 SECTION 4. Section 33.005, Finance Code, is amended to read
15 as follows:

16 Sec. 33.005. EXEMPTIONS. The following acquisitions are
17 exempt from Section 33.001:

18 (1) an acquisition of securities in connection with
19 the exercise of a security interest or otherwise in full or partial
20 satisfaction of a debt previously contracted for in good faith and
21 the acquiring person files written notice of acquisition with the
22 banking commissioner before the person votes the securities
23 acquired;

24 (2) unless the banking commissioner provides
25 otherwise in writing, an acquisition of voting securities in any
26 class or series by a controlling person who:

27 (A) [~~has previously complied with and received~~

1 ~~approval under this subchapter or who]~~ was identified as a
2 controlling person in a state bank in a prior application filed with
3 and approved by the banking commissioner;

4 (B) has from the date of receipt of approval
5 under this subchapter continuously held power to vote 25 percent or
6 more of any class of voting securities of the state bank; or

7 (C) is considered to have from the date of
8 receipt of approval under this subchapter continuously controlled
9 the state bank under Section 33.001(b);

10 (3) an acquisition or transfer by operation of law,
11 will, or intestate succession and the acquiring person files
12 written notice of acquisition with the banking commissioner before
13 the person votes the securities acquired;

14 (4) a transaction subject to Chapter 202 if:

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

17 (B) the post-transaction controlling person[+
18 ~~[(i) has previously complied with and~~
19 ~~received approval as a controlling person under this subchapter; or~~

20 ~~[(ii)]~~ is identified as the controlling
21 person in a merger or other acquisition-related application filed
22 with the banking commissioner concurrently with the submission
23 required by Section 202.001; and

24 (5) a transaction exempted by the banking commissioner
25 or by rules adopted under this subtitle because the transaction is
26 not within the purposes of this subchapter or the regulation of the
27 transaction is not necessary or appropriate to achieve the

1 objectives of this subchapter.

2 SECTION 5. Section 34.103(c), Finance Code, is amended to
3 read as follows:

4 (c) A state bank may not establish or acquire a subsidiary
5 or a controlling interest in a subsidiary that engages in
6 activities as principal in which the bank is prohibited from
7 engaging directly unless:

8 (1) the state bank's investment in the subsidiary has
9 been allowed [~~approved~~] by the Federal Deposit Insurance
10 Corporation under Section 24, Federal Deposit Insurance Act (12
11 U.S.C. Section 1831a); or

12 (2) with respect to a subsidiary engaged in activities
13 as principal that a national bank may conduct only through a
14 financial subsidiary, including firm underwriting of equity
15 securities other than as permitted by Section 34.101, and not
16 otherwise engaged in activities as principal that are impermissible
17 for a state bank or a financial subsidiary of a national bank, the
18 subsidiary's activities and the bank's investment are in compliance
19 with the restrictions and requirements of Section 46, Federal
20 Deposit Insurance Act (12 U.S.C. Section 1831w).

21 SECTION 6. Section 35.002(a), Finance Code, is amended to
22 read as follows:

23 (a) The banking commissioner has grounds to issue a cease
24 and desist order to a current or former [~~an~~] officer, employee, or
25 director of a state bank, or the bank itself acting through an
26 authorized person, if the banking commissioner determines from
27 examination or other credible evidence that the bank or person

1 directly or indirectly has:

- 2 (1) violated this subtitle or another applicable law;
- 3 (2) engaged in a breach of trust or other fiduciary
- 4 duty;
- 5 (3) refused to submit to examination or examination
- 6 under oath;
- 7 (4) conducted business in an unsafe or unsound manner;
- 8 or
- 9 (5) violated a condition of the bank's charter or an
- 10 agreement between the bank or the person and the banking
- 11 commissioner or the department.

12 SECTION 7. Section 35.106, Finance Code, is amended to read

13 as follows:

14 Sec. 35.106. AUTHORITY OF SUPERVISOR. During a period of

15 supervision, a bank, without the prior approval of the banking

16 commissioner or the supervisor or as otherwise permitted or

17 restricted by the order of supervision, may not:

18 (1) dispose of, sell, transfer, convey, or encumber

19 the bank's assets;

20 (2) lend or invest the bank's money;

21 (3) incur a debt, obligation, or liability;

22 (4) pay a cash dividend to the bank's shareholders;

23 [~~or~~]

24 (5) remove an executive officer or director, change

25 the number of executive officers or directors, or have any other

26 change in the position of executive officer or director; or

27 (6) engage in any other activity determined by the

1 banking commissioner to threaten the safety and soundness of the
2 bank.

3 SECTION 8. Section 281.006, Finance Code, is amended to
4 read as follows:

5 Sec. 281.006. RECORDS. To the extent permitted by state or
6 federal law, a financial institution shall provide, on request,
7 access to or copies of records relevant to the suspected financial
8 exploitation of a vulnerable adult to the department, the
9 commissioner, a law enforcement agency, or a prosecuting attorney's
10 office, either as part of a report to the department, commissioner,
11 law enforcement agency, or prosecuting attorney's office or at the
12 request of the department, commissioner, law enforcement agency, or
13 prosecuting attorney's office in accordance with an investigation.

14 SECTION 9. Section 35.002(a), Finance Code, as amended by
15 this Act, applies only to a violation that occurs on or after the
16 effective date of this Act. A violation that occurs before the
17 effective date of this Act is governed by the law in effect when the
18 violation occurred, and the former law is continued in effect for
19 that purpose.

20 SECTION 10. To the extent of any conflict, this Act prevails
21 over another Act of the 88th Legislature, Regular Session, 2023,
22 relating to nonsubstantive additions to and corrections in enacted
23 codes.

24 SECTION 11. This Act takes effect immediately if it
25 receives a vote of two-thirds of all the members elected to each
26 house, as provided by Section 39, Article III, Texas Constitution.
27 If this Act does not receive the vote necessary for immediate

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1 effect, this Act takes effect September 1, 2023.