

1-1 By: Lambert, Ashby (Senate Sponsor - Parker) H.B. No. 3574
1-2 (In the Senate - Received from the House May 1, 2023;
1-3 May 5, 2023, read first time and referred to Committee on
1-4 Administration; May 16, 2023, reported favorably by the following
1-5 vote: Yeas 7, Nays 0; May 16, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			

1-15 A BILL TO BE ENTITLED
1-16 AN ACT

1-17 relating to the regulation of state banks.

1-18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-19 SECTION 1. Section 31.002(a)(15), Finance Code, is amended
1-20 to read as follows:

1-21 (15) "Deposit" means the establishment of a
1-22 debtor-creditor relationship represented by the agreement of the
1-23 deposit debtor to act as a holding, paying, or disbursing agent for
1-24 the deposit creditor. The term:

1-25 (A) includes:

1-26 (i) an unpaid balance of money that is
1-27 received by the deposit debtor in the usual course of business in
1-28 exchange for conditional or unconditional credit to a commercial,
1-29 checking, savings, or time account of the deposit creditor or the
1-30 creditor's designee, or that is evidenced by a certificate of
1-31 deposit or similar instrument, a certified check or draft drawn
1-32 against a deposit account, or a letter of credit or traveler's check
1-33 on which the deposit debtor is primarily liable, but excluding an
1-34 obligation arising under Chapter 151 [152];

1-35 (ii) money or credit given for money
1-36 received by the deposit debtor in the usual course of business for a
1-37 special purpose, including money:

1-38 (a) held as escrow money, as security
1-39 for an obligation due to the deposit debtor or another person, or as
1-40 security for a loan;

1-41 (b) left with a deposit debtor by a
1-42 deposit creditor to meet maturing obligations that are not yet due;
1-43 and

1-44 (c) held by the deposit debtor to meet
1-45 an acceptance or letter of credit;

1-46 (iii) an outstanding draft, cashier's
1-47 check, money order, or other officer's check issued by the deposit
1-48 debtor in the usual course of business for any purpose, including
1-49 payment for services, dividends, or purchases; and

1-50 (iv) an obligation that the finance
1-51 commission by rule defines as a deposit liability, except that the
1-52 term may not include money received for immediate application to
1-53 reduction of an indebtedness; and

1-54 (B) does not include an obligation that this
1-55 subtitle or finance commission rule determines not to be a deposit
1-56 liability.

1-57 SECTION 2. Section 31.005(b), Finance Code, is amended to
1-58 read as follows:

1-59 (b) Subsection (a) does not apply to a federally insured
1-60 depository institution [~~or other entity~~] organized under the laws
1-61 of this state, another state, the United States, or a foreign

2-1 sovereign state to the extent that the depository institution or
 2-2 other entity is:

2-3 (1) authorized under its charter or the laws of this
 2-4 state or the United States to use a term, word, character, ideogram,
 2-5 phonogram, or phrase prohibited by Subsection (a); and

2-6 (2) authorized by the laws of this state or the United
 2-7 States to conduct the activities in which it is engaged in this
 2-8 state.

2-9 SECTION 3. Section 31.105, Finance Code, is amended by
 2-10 adding Subsection (c-2) to read as follows:

2-11 (c-2) If a person currently serving as an officer, director,
 2-12 employee, controlling shareholder, or other position participating
 2-13 in the affairs of a state bank refuses to comply with a subpoena,
 2-14 the banking commissioner may issue an order on an emergency basis
 2-15 removing the person from the person's position and prohibiting the
 2-16 person from participating in the affairs of the state bank or any
 2-17 other entity chartered, registered, permitted, or licensed by the
 2-18 banking commissioner until the person complies with the subpoena.

2-19 SECTION 4. Section 33.005, Finance Code, is amended to read
 2-20 as follows:

2-21 Sec. 33.005. EXEMPTIONS. The following acquisitions are
 2-22 exempt from Section 33.001:

2-23 (1) an acquisition of securities in connection with
 2-24 the exercise of a security interest or otherwise in full or partial
 2-25 satisfaction of a debt previously contracted for in good faith and
 2-26 the acquiring person files written notice of acquisition with the
 2-27 banking commissioner before the person votes the securities
 2-28 acquired;

2-29 (2) unless the banking commissioner provides
 2-30 otherwise in writing, an acquisition of voting securities in any
 2-31 class or series by a controlling person who:

2-32 (A) ~~[has previously complied with and received~~
 2-33 ~~approval under this subchapter or who]~~ was identified as a
 2-34 controlling person in a state bank in a prior application filed with
 2-35 and approved by the banking commissioner;

2-36 (B) has from the date of receipt of approval
 2-37 under this subchapter continuously held power to vote 25 percent or
 2-38 more of any class of voting securities of the state bank; or

2-39 (C) is considered to have from the date of
 2-40 receipt of approval under this subchapter continuously controlled
 2-41 the state bank under Section 33.001(b);

2-42 (3) an acquisition or transfer by operation of law,
 2-43 will, or intestate succession and the acquiring person files
 2-44 written notice of acquisition with the banking commissioner before
 2-45 the person votes the securities acquired;

2-46 (4) a transaction subject to Chapter 202 if:

2-47 (A) the acquiring bank holding company currently
 2-48 owns and controls a state bank; or

2-49 (B) the post-transaction controlling person~~[+~~
 2-50 ~~[(i) has previously complied with and~~
 2-51 ~~received approval as a controlling person under this subchapter, or~~
 2-52 ~~[(ii)]~~ is identified as the controlling
 2-53 person in a merger or other acquisition-related application filed
 2-54 with the banking commissioner concurrently with the submission
 2-55 required by Section 202.001; and

2-56 (5) a transaction exempted by the banking commissioner
 2-57 or by rules adopted under this subtitle because the transaction is
 2-58 not within the purposes of this subchapter or the regulation of the
 2-59 transaction is not necessary or appropriate to achieve the
 2-60 objectives of this subchapter.

2-61 SECTION 5. Section 34.103(c), Finance Code, is amended to
 2-62 read as follows:

2-63 (c) A state bank may not establish or acquire a subsidiary
 2-64 or a controlling interest in a subsidiary that engages in
 2-65 activities as principal in which the bank is prohibited from
 2-66 engaging directly unless:

2-67 (1) the state bank's investment in the subsidiary has
 2-68 been allowed ~~[approved]~~ by the Federal Deposit Insurance
 2-69 Corporation under Section 24, Federal Deposit Insurance Act (12

3-1 U.S.C. Section 1831a); or
 3-2 (2) with respect to a subsidiary engaged in activities
 3-3 as principal that a national bank may conduct only through a
 3-4 financial subsidiary, including firm underwriting of equity
 3-5 securities other than as permitted by Section 34.101, and not
 3-6 otherwise engaged in activities as principal that are impermissible
 3-7 for a state bank or a financial subsidiary of a national bank, the
 3-8 subsidiary's activities and the bank's investment are in compliance
 3-9 with the restrictions and requirements of Section 46, Federal
 3-10 Deposit Insurance Act (12 U.S.C. Section 1831w).

3-11 SECTION 6. Section 35.002(a), Finance Code, is amended to
 3-12 read as follows:

3-13 (a) The banking commissioner has grounds to issue a cease
 3-14 and desist order to a current or former ~~an~~ officer, employee, or
 3-15 director of a state bank, or the bank itself acting through an
 3-16 authorized person, if the banking commissioner determines from
 3-17 examination or other credible evidence that the bank or person
 3-18 directly or indirectly has:

3-19 (1) violated this subtitle or another applicable law;
 3-20 (2) engaged in a breach of trust or other fiduciary
 3-21 duty;

3-22 (3) refused to submit to examination or examination
 3-23 under oath;

3-24 (4) conducted business in an unsafe or unsound manner;
 3-25 or

3-26 (5) violated a condition of the bank's charter or an
 3-27 agreement between the bank or the person and the banking
 3-28 commissioner or the department.

3-29 SECTION 7. Section 35.106, Finance Code, is amended to read
 3-30 as follows:

3-31 Sec. 35.106. AUTHORITY OF SUPERVISOR. During a period of
 3-32 supervision, a bank, without the prior approval of the banking
 3-33 commissioner or the supervisor or as otherwise permitted or
 3-34 restricted by the order of supervision, may not:

3-35 (1) dispose of, sell, transfer, convey, or encumber
 3-36 the bank's assets;

3-37 (2) lend or invest the bank's money;

3-38 (3) incur a debt, obligation, or liability;

3-39 (4) pay a cash dividend to the bank's shareholders;
 3-40 ~~or~~

3-41 (5) remove an executive officer or director, change
 3-42 the number of executive officers or directors, or have any other
 3-43 change in the position of executive officer or director; or

3-44 (6) engage in any other activity determined by the
 3-45 banking commissioner to threaten the safety and soundness of the
 3-46 bank.

3-47 SECTION 8. Section 281.006, Finance Code, is amended to
 3-48 read as follows:

3-49 Sec. 281.006. RECORDS. To the extent permitted by state or
 3-50 federal law, a financial institution shall provide, on request,
 3-51 access to or copies of records relevant to the suspected financial
 3-52 exploitation of a vulnerable adult to the department, the
 3-53 commissioner, a law enforcement agency, or a prosecuting attorney's
 3-54 office, either as part of a report to the department, commissioner,
 3-55 law enforcement agency, or prosecuting attorney's office or at the
 3-56 request of the department, commissioner, law enforcement agency, or
 3-57 prosecuting attorney's office in accordance with an investigation.

3-58 SECTION 9. Section 35.002(a), Finance Code, as amended by
 3-59 this Act, applies only to a violation that occurs on or after the
 3-60 effective date of this Act. A violation that occurs before the
 3-61 effective date of this Act is governed by the law in effect when the
 3-62 violation occurred, and the former law is continued in effect for
 3-63 that purpose.

3-64 SECTION 10. To the extent of any conflict, this Act prevails
 3-65 over another Act of the 88th Legislature, Regular Session, 2023,
 3-66 relating to nonsubstantive additions to and corrections in enacted
 3-67 codes.

3-68 SECTION 11. This Act takes effect immediately if it
 3-69 receives a vote of two-thirds of all the members elected to each

4-1 house, as provided by Section 39, Article III, Texas Constitution.
4-2 If this Act does not receive the vote necessary for immediate
4-3 effect, this Act takes effect September 1, 2023.

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