

1-1 By: Parker S.B. No. 1644
 1-2 (In the Senate - Filed March 6, 2023; March 16, 2023, read
 1-3 first time and referred to Committee on Business & Commerce;
 1-4 April 17, 2023, reported favorably by the following vote: Yeas 10,
 1-5 Nays 0; April 17, 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	X			
1-16	X			
1-17	X			
1-18	X			

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the regulation of state banks.
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-23 SECTION 1. Section 31.002(a)(15), Finance Code, is amended
 1-24 to read as follows:
 1-25 (15) "Deposit" means the establishment of a
 1-26 debtor-creditor relationship represented by the agreement of the
 1-27 deposit debtor to act as a holding, paying, or disbursing agent for
 1-28 the deposit creditor. The term:
 1-29 (A) includes:
 1-30 (i) an unpaid balance of money that is
 1-31 received by the deposit debtor in the usual course of business in
 1-32 exchange for conditional or unconditional credit to a commercial,
 1-33 checking, savings, or time account of the deposit creditor or the
 1-34 creditor's designee, or that is evidenced by a certificate of
 1-35 deposit or similar instrument, a certified check or draft drawn
 1-36 against a deposit account, or a letter of credit or traveler's check
 1-37 on which the deposit debtor is primarily liable, but excluding an
 1-38 obligation arising under Chapter 151 [152];
 1-39 (ii) money or credit given for money
 1-40 received by the deposit debtor in the usual course of business for a
 1-41 special purpose, including money:
 1-42 (a) held as escrow money, as security
 1-43 for an obligation due to the deposit debtor or another person, or as
 1-44 security for a loan;
 1-45 (b) left with a deposit debtor by a
 1-46 deposit creditor to meet maturing obligations that are not yet due;
 1-47 and
 1-48 (c) held by the deposit debtor to meet
 1-49 an acceptance or letter of credit;
 1-50 (iii) an outstanding draft, cashier's
 1-51 check, money order, or other officer's check issued by the deposit
 1-52 debtor in the usual course of business for any purpose, including
 1-53 payment for services, dividends, or purchases; and
 1-54 (iv) an obligation that the finance
 1-55 commission by rule defines as a deposit liability, except that the
 1-56 term may not include money received for immediate application to
 1-57 reduction of an indebtedness; and
 1-58 (B) does not include an obligation that this
 1-59 subtitle or finance commission rule determines not to be a deposit
 1-60 liability.
 1-61 SECTION 2. Section 31.005(b), Finance Code, is amended to

2-1 read as follows:

2-2 (b) Subsection (a) does not apply to a federally insured
2-3 depository institution [~~or other entity~~] organized under the laws
2-4 of this state, another state, the United States, or a foreign
2-5 sovereign state to the extent that the depository institution or
2-6 other entity is:

2-7 (1) authorized under its charter or the laws of this
2-8 state or the United States to use a term, word, character, ideogram,
2-9 phonogram, or phrase prohibited by Subsection (a); and

2-10 (2) authorized by the laws of this state or the United
2-11 States to conduct the activities in which it is engaged in this
2-12 state.

2-13 SECTION 3. Section 31.105, Finance Code, is amended by
2-14 adding Subsection (c-2) to read as follows:

2-15 (c-2) If a person currently serving as an officer, director,
2-16 employee, controlling shareholder, or other position participating
2-17 in the affairs of a state bank refuses to comply with a subpoena,
2-18 the banking commissioner may issue an order on an emergency basis
2-19 removing the person from the person's position and prohibiting the
2-20 person from participating in the affairs of the state bank or any
2-21 other entity chartered, registered, permitted, or licensed by the
2-22 banking commissioner until the person complies with the subpoena.

2-23 SECTION 4. Section 33.005, Finance Code, is amended to read
2-24 as follows:

2-25 Sec. 33.005. EXEMPTIONS. The following acquisitions are
2-26 exempt from Section 33.001:

2-27 (1) an acquisition of securities in connection with
2-28 the exercise of a security interest or otherwise in full or partial
2-29 satisfaction of a debt previously contracted for in good faith and
2-30 the acquiring person files written notice of acquisition with the
2-31 banking commissioner before the person votes the securities
2-32 acquired;

2-33 (2) unless the banking commissioner provides
2-34 otherwise in writing, an acquisition of voting securities in any
2-35 class or series by a controlling person who:

2-36 (A) [has previously complied with and received
2-37 approval under this subchapter or who] was identified as a
2-38 controlling person in a state bank in a prior application filed with
2-39 and approved by the banking commissioner;

2-40 (B) has from the date of receipt of approval
2-41 under this subchapter continuously held power to vote 25 percent or
2-42 more of any class of voting securities of the state bank; or

2-43 (C) is considered to have from the date of
2-44 receipt of approval under this subchapter continuously controlled
2-45 the state bank under Section 33.001(b);

2-46 (3) an acquisition or transfer by operation of law,
2-47 will, or intestate succession and the acquiring person files
2-48 written notice of acquisition with the banking commissioner before
2-49 the person votes the securities acquired;

2-50 (4) a transaction subject to Chapter 202 if:

2-51 (A) the acquiring bank holding company currently
2-52 owns and controls a state bank; or

2-53 (B) the post-transaction controlling person[+
2-54 [(i) has previously complied with and
2-55 received approval as a controlling person under this subchapter; or
2-56 [(ii)] is identified as the controlling

2-57 person in a merger or other acquisition-related application filed
2-58 with the banking commissioner concurrently with the submission
2-59 required by Section 202.001; and

2-60 (5) a transaction exempted by the banking commissioner
2-61 or by rules adopted under this subtitle because the transaction is
2-62 not within the purposes of this subchapter or the regulation of the
2-63 transaction is not necessary or appropriate to achieve the
2-64 objectives of this subchapter.

2-65 SECTION 5. Section 34.103(c), Finance Code, is amended to
2-66 read as follows:

2-67 (c) A state bank may not establish or acquire a subsidiary
2-68 or a controlling interest in a subsidiary that engages in
2-69 activities as principal in which the bank is prohibited from

3-1 engaging directly unless:

3-2 (1) the state bank's investment in the subsidiary has
 3-3 been allowed [~~approved~~] by the Federal Deposit Insurance
 3-4 Corporation under Section 24, Federal Deposit Insurance Act (12
 3-5 U.S.C. Section 1831a); or

3-6 (2) with respect to a subsidiary engaged in activities
 3-7 as principal that a national bank may conduct only through a
 3-8 financial subsidiary, including firm underwriting of equity
 3-9 securities other than as permitted by Section 34.101, and not
 3-10 otherwise engaged in activities as principal that are impermissible
 3-11 for a state bank or a financial subsidiary of a national bank, the
 3-12 subsidiary's activities and the bank's investment are in compliance
 3-13 with the restrictions and requirements of Section 46, Federal
 3-14 Deposit Insurance Act (12 U.S.C. Section 1831w).

3-15 SECTION 6. Section 35.002(a), Finance Code, is amended to
 3-16 read as follows:

3-17 (a) The banking commissioner has grounds to issue a cease
 3-18 and desist order to a current or former [~~an~~] officer, employee, or
 3-19 director of a state bank, or the bank itself acting through an
 3-20 authorized person, if the banking commissioner determines from
 3-21 examination or other credible evidence that the bank or person
 3-22 directly or indirectly has:

3-23 (1) violated this subtitle or another applicable law;

3-24 (2) engaged in a breach of trust or other fiduciary
 3-25 duty;

3-26 (3) refused to submit to examination or examination
 3-27 under oath;

3-28 (4) conducted business in an unsafe or unsound manner;

3-29 or

3-30 (5) violated a condition of the bank's charter or an
 3-31 agreement between the bank or the person and the banking
 3-32 commissioner or the department.

3-33 SECTION 7. Section 35.106, Finance Code, is amended to read
 3-34 as follows:

3-35 Sec. 35.106. AUTHORITY OF SUPERVISOR. During a period of
 3-36 supervision, a bank, without the prior approval of the banking
 3-37 commissioner or the supervisor or as otherwise permitted or
 3-38 restricted by the order of supervision, may not:

3-39 (1) dispose of, sell, transfer, convey, or encumber
 3-40 the bank's assets;

3-41 (2) lend or invest the bank's money;

3-42 (3) incur a debt, obligation, or liability;

3-43 (4) pay a cash dividend to the bank's shareholders;

3-44 [~~or~~]

3-45 (5) remove an executive officer or director, change
 3-46 the number of executive officers or directors, or have any other
 3-47 change in the position of executive officer or director; or

3-48 (6) engage in any other activity determined by the
 3-49 banking commissioner to threaten the safety and soundness of the
 3-50 bank.

3-51 SECTION 8. Section 281.006, Finance Code, is amended to
 3-52 read as follows:

3-53 Sec. 281.006. RECORDS. To the extent permitted by state or
 3-54 federal law, a financial institution shall provide, on request,
 3-55 access to or copies of records relevant to the suspected financial
 3-56 exploitation of a vulnerable adult to the department, the
 3-57 commissioner, a law enforcement agency, or a prosecuting attorney's
 3-58 office, either as part of a report to the department, commissioner,
 3-59 law enforcement agency, or prosecuting attorney's office or at the
 3-60 request of the department, commissioner, law enforcement agency, or
 3-61 prosecuting attorney's office in accordance with an investigation.

3-62 SECTION 9. Section 35.002(a), Finance Code, as amended by
 3-63 this Act, applies only to a violation that occurs on or after the
 3-64 effective date of this Act. A violation that occurs before the
 3-65 effective date of this Act is governed by the law in effect when the
 3-66 violation occurred, and the former law is continued in effect for
 3-67 that purpose.

3-68 SECTION 10. To the extent of any conflict, this Act prevails
 3-69 over another Act of the 88th Legislature, Regular Session, 2023,

4-1 relating to nonsubstantive additions to and corrections in enacted
4-2 codes.

4-3 SECTION 11. This Act takes effect immediately if it
4-4 receives a vote of two-thirds of all the members elected to each
4-5 house, as provided by Section 39, Article III, Texas Constitution.
4-6 If this Act does not receive the vote necessary for immediate
4-7 effect, this Act takes effect September 1, 2023.

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