

By: Solomons

H.B. No. 2007

A BILL TO BE ENTITLED

AN ACT

relating to modernization of the regulation of banking in this state.

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

SECTION 1. Subchapter B, Chapter 12, Finance Code, is amended by adding Section 12.1085 to read as follows:

Sec. 12.1085. FINANCIAL LITERACY PROGRAM. (a) The department shall seek to improve the financial literacy and education of persons in this state and to encourage access to mainstream financial products and services by persons who have not previously participated in the conventional finance system, by:

(1) coordinating, encouraging, and aiding banks in the development and promotion of financial literacy and education programs and community outreach;

(2) serving as a clearinghouse of information about financial literacy and education programs;

(3) creating and maintaining a resource bank of materials pertaining to financial literacy; and

(4) promoting replication of best practices and exemplary programs that foster financial literacy and education.

(b) The department may solicit and accept a gift, grant, or donation from any source, including a foundation, private entity, governmental entity, or institution of higher education, to assist in the implementation of this section.

1 SECTION 2. Section 31.105, Finance Code, is amended to read
2 as follows:

3 Sec. 31.105. EXAMINATION REQUIRED. (a) The banking
4 commissioner shall examine each state bank annually, or on another
5 periodic basis as may be required by rule or policy, or [~~not less~~
6 ~~than once during each 12-month period, except that this examination~~
7 ~~is required not less than once during each 18-month period if the~~
8 ~~state bank:~~

9 [(1) ~~has total assets of less than \$250 million;~~

10 [(2) ~~is well capitalized, as defined by Section 38,~~
11 ~~Federal Deposit Insurance Act (12 U.S.C. Section 1831e);~~

12 [(3) ~~was found to be well managed at its most recent~~
13 ~~examination, and its composite condition:~~

14 [(A) ~~was found to be outstanding; or~~

15 [(B) ~~was found to be outstanding or good, in the~~
16 ~~case of a state bank that has total assets of not more than \$100~~
17 ~~million;~~

18 [(4) ~~is not currently subject to a formal enforcement~~
19 ~~proceeding or order by the banking commissioner or by a federal~~
20 ~~banking agency; and~~

21 [(5) ~~was not the subject of a change of control under~~
22 ~~Section 33.001 during the 12-month period in which a full-scope,~~
23 ~~on-site examination would be required but for Subdivisions (1)-(4).~~

24 [(b) ~~The banking commissioner may examine a state bank more~~
25 ~~often than required by Subsection (a)] as the commissioner
26 considers necessary to:~~

27 (1) safeguard the interests of depositors, creditors,

1 shareholders, participants, and participant-transferees; and

2 (2) efficiently enforce applicable law.

3 (b) [~~(c)~~] ~~The banking commissioner may defer an examination~~
4 ~~for not more than six months if the commissioner considers the~~
5 ~~deferral necessary for the efficient enforcement of applicable~~
6 ~~law.~~

7 [~~(d)~~] The banking commissioner may:

8 (1) accept an examination of a state bank by a federal
9 or other governmental agency instead of an examination under this
10 section; or

11 (2) conduct an examination of a state bank jointly
12 with a federal or other governmental agency.

13 (c) [~~(e)~~] The banking commissioner may administer oaths and
14 examine persons under oath on any subject that the commissioner
15 considers pertinent to the financial condition or the safety and
16 soundness of the activities of a state bank.

17 (d) [~~(f)~~] Disclosure of information to the banking
18 commissioner pursuant to an examination request does not constitute
19 a waiver of or otherwise affect or diminish an evidentiary
20 privilege to which the information is otherwise subject. A report
21 of an examination under this section is confidential and may be
22 disclosed only under the circumstances provided by this subtitle.

23 SECTION 3. Section 34.002(a), Finance Code, is amended to
24 read as follows:

25 (a) Without the prior written approval of the banking
26 commissioner, a state bank may not directly or indirectly invest an
27 amount in excess of its unimpaired capital and [~~certified~~] surplus

1 in bank facilities, furniture, fixtures, and equipment. Except as
2 otherwise provided by rules adopted under this subtitle, in
3 computing this limitation the bank:

4 (1) shall include:

5 (A) its direct investment in bank facilities;

6 (B) an investment in equity or investment
7 securities of a company holding title to a facility used by the bank
8 for a purpose specified by Section 34.001;

9 (C) a loan made by the bank to or on the security
10 of equity or investment securities issued by a company holding
11 title to a facility used by the bank; and

12 (D) any indebtedness incurred on bank facilities
13 by a company:

14 (i) that holds title to the facility;

15 (ii) that is an affiliate of the bank; and

16 (iii) in which the bank is invested in the
17 manner described by Paragraph (B) or (C); and

18 (2) may exclude an amount included under Subdivisions
19 (1)(B)-(D) to the extent a lease of a facility from the company
20 holding title to the facility is capitalized on the books of the
21 bank.

22 SECTION 4. Subchapter A, Chapter 34, Finance Code, is
23 amended by adding Section 34.004 to read as follows:

24 Sec. 34.004. PASSIVE INVESTMENT IN MINERAL INTERESTS. (a)
25 Notwithstanding Section 34.003(a), a state bank may hold nonworking
26 mineral or royalty interests if:

27 (1) the state bank acquires the interest pursuant to

1 Section 34.003(a)(3);

2 (2) the interest is not subject to expenses of
3 exploration, development, production, operation, maintenance, or
4 abandonment, or any other expense associated with extracting and
5 marketing the minerals subject to the rights or interest;

6 (3) the interest is reasonably valued on the books of
7 the state bank for not more than a nominal amount, and the aggregate
8 amount of earnings from such interests is separately disclosed in
9 the annual financial statements of the state bank;

10 (4) the state bank does not make any new investments
11 relating to the rights or interests without the approval of the
12 banking commissioner; and

13 (5) the banking commissioner determines that the
14 possession of such rights and interests is not inconsistent with
15 the safety and soundness of the state bank.

16 (b) The banking commissioner may order a state bank that
17 holds nonworking mineral or royalty interests to divest such
18 interests at any time if the banking commissioner determines that
19 continued ownership of such interests is detrimental to the state
20 bank.

21 (c) Subject to compliance with this section, nonworking
22 mineral or royalty interests are not considered to be real property
23 for purposes of this subtitle.

24 SECTION 5. Sections 34.101(c) and (f), Finance Code, are
25 amended to read as follows:

26 (c) A state bank may purchase investment securities for its
27 own account under limitations and restrictions prescribed by rules

1 adopted under this subtitle. Except as otherwise provided by this
2 section, the amount of the investment securities of any one obligor
3 or maker held by the bank for its own account may not exceed an
4 amount equal to [~~the lesser of~~] 15 percent of the bank's unimpaired
5 capital and [~~certified~~] surplus [~~or the bank's total equity~~
6 ~~capital~~]. The banking commissioner may authorize investments in
7 excess of this limitation on written application if the banking
8 commissioner determines that:

9 (1) the excess investment is not prohibited by other
10 applicable law; and

11 (2) the safety and soundness of the requesting state
12 bank is not adversely affected.

13 (f) A state bank may not invest more than an amount equal to
14 [~~the lesser of~~] 25 percent of the bank's unimpaired capital and
15 [~~certified~~] surplus [~~or the bank's total equity capital~~] in
16 investment grade adjustable rate preferred stock and money market
17 (auction rate) preferred stock.

18 SECTION 6. Section 34.103(b), Finance Code, is amended to
19 read as follows:

20 (b) Except for investment in a subsidiary engaging solely in
21 activities that may be engaged in directly by the bank and that are
22 conducted on the same terms and conditions that govern the conduct
23 of the activities by the bank, a state bank without the prior
24 written approval of the banking commissioner may not invest more
25 than an amount equal to 10 percent of [~~the lesser of~~] its unimpaired
26 capital and [~~certified~~] surplus [~~or the bank's total equity~~
27 ~~capital~~] in a single subsidiary. For purposes of this subsection,

1 the amount of a state bank's investment in a subsidiary is the sum
2 of the amount of the bank's investment in securities issued by the
3 subsidiary and any loans and extensions of credit from the bank to
4 the subsidiary.

5 SECTION 7. Section 34.104(c), Finance Code, is amended to
6 read as follows:

7 (c) The bank may invest not more than an amount equal to 15
8 percent of the bank's unimpaired capital and [~~certified~~] surplus in
9 an investment company described by Subsection (a) the portfolio of
10 which contains an investment or obligation that is subject to the
11 limitations of Section 34.101(d) or 34.201(a).

12 SECTION 8. Section 34.105(a), Finance Code, is amended to
13 read as follows:

14 (a) A state bank may purchase for its own account equity
15 securities of any class issued by:

16 (1) a bank service corporation, except that the bank
17 may not invest more than an amount equal to 15 percent of the bank's
18 unimpaired capital and [~~certified~~] surplus in a single bank service
19 corporation or more than an amount equal to five percent of its
20 assets in all bank service corporations;

21 (2) an agricultural credit corporation, except that
22 the bank may not invest more than an amount equal to 30 percent of
23 the bank's unimpaired capital and [~~certified~~] surplus in the
24 agricultural credit corporation unless the bank owns at least 80
25 percent of the equity securities of the agricultural credit
26 corporation;

27 (3) a small business investment company if the

1 aggregate investment does not exceed an amount equal to 10 percent
2 of the bank's unimpaired capital and [~~certified~~] surplus;

3 (4) a banker's bank if the aggregate investment does
4 not exceed an amount equal to 15 percent of the bank's unimpaired
5 capital and [~~certified~~] surplus or result in the bank acquiring or
6 retaining ownership, control, or power to vote more than five
7 percent of any class of voting securities of the banker's bank; or

8 (5) a housing corporation if the sum of the amount of
9 investment and the amount of loans and commitments for loans to the
10 housing corporation does not exceed an amount equal to 10 percent of
11 the bank's unimpaired capital and [~~certified~~] surplus.

12 SECTION 9. Section 34.106(d), Finance Code, is amended to
13 read as follows:

14 (d) A bank's aggregate investments under this section,
15 including loans and commitments for loans, may not exceed an amount
16 equal to 10 percent of the bank's unimpaired capital and
17 [~~certified~~] surplus. The banking commissioner may authorize
18 investments in excess of this limitation in response to a written
19 application if the banking commissioner concludes that:

20 (1) the excess investment is not precluded by other
21 applicable law; and

22 (2) the safety and soundness of the requesting bank
23 would not be adversely affected.

24 SECTION 10. Section 34.201(a), Finance Code, is amended to
25 read as follows:

26 (a) Without the prior written approval of the banking
27 commissioner, the total loans and extensions of credit by a state

1 bank to a person outstanding at one time may not exceed an amount
2 equal to 25 percent of [~~the lesser of~~] the bank's unimpaired capital
3 and [~~certified~~] surplus [~~or the bank's total equity capital~~]. This
4 limitation does not apply to:

5 (1) liability as endorser or guarantor of commercial
6 or business paper discounted by or assigned to the bank by its owner
7 who has acquired it in the ordinary course of business;

8 (2) indebtedness evidenced by bankers' acceptances as
9 described by 12 U.S.C. Section 372 and issued by other banks;

10 (3) indebtedness secured by a bill of lading,
11 warehouse receipt, or similar document transferring or securing
12 title to readily marketable goods, except that:

13 (A) the goods must be insured if it is customary
14 to insure those goods; and

15 (B) the aggregate indebtedness of a person under
16 this subdivision may not exceed an amount equal to 50 percent of
17 [~~the lesser of~~] the bank's unimpaired capital and [~~certified~~]
18 surplus [~~or the bank's total equity capital~~];

19 (4) indebtedness evidenced by notes or other paper
20 secured by liens on agricultural products in secure and properly
21 documented storage in bonded warehouses or elevators if the value
22 of the collateral is not less than 125 percent of the amount of the
23 indebtedness and the bank's interest in the collateral is
24 adequately insured against loss, except that the aggregate
25 indebtedness of a person under this subdivision may not exceed an
26 amount equal to 50 percent of [~~the lesser of~~] the bank's unimpaired
27 capital and [~~certified~~] surplus [~~or the bank's total equity~~

1 ~~capital~~];

2 (5) indebtedness of another depository institution
3 arising out of loans with settlement periods of less than one week;

4 (6) indebtedness arising out of the daily transaction
5 of the business of a clearinghouse association in this state;

6 (7) liability under an agreement by a third party to
7 repurchase from the bank an investment security listed in Section
8 34.101(d) to the extent that the agreed repurchase price does not
9 exceed the original purchase price to the bank or the market value
10 of the investment security;

11 (8) the portion of an indebtedness that this state, an
12 agency or political subdivision of this state, the United States,
13 or an instrumentality of the United States has unconditionally
14 agreed to repay, purchase, insure, or guarantee;

15 (9) indebtedness secured by securities listed in
16 Section 34.101(d) to the extent that the market value of the
17 securities equals or exceeds the indebtedness;

18 (10) the portion of an indebtedness that is fully
19 secured by a segregated deposit account in the lending bank;

20 (11) loans and extensions of credit arising from the
21 purchase of negotiable or nonnegotiable installment consumer paper
22 that carries a full recourse endorsement or unconditional guarantee
23 by the person transferring the paper if:

24 (A) the bank's files or the knowledge of its
25 officers of the financial condition of each maker of the consumer
26 paper is reasonably adequate; and

27 (B) an officer of the bank designated for that

1 purpose by the board certifies in writing that the bank is relying
2 primarily on the responsibility of each maker for payment of the
3 loans or extensions of credit and not on a full or partial recourse
4 endorsement or guarantee by the transferor;

5 (12) the portion of an indebtedness in excess of the
6 limitation of this subsection that is fully secured by marketable
7 securities or bullion with a market value at least equal to the
8 amount of the overage, as determined by reliable and continuously
9 available price quotations, except that the exempted indebtedness
10 or overage of a person under this subdivision may not exceed an
11 amount equal to 15 percent of [~~the lesser of~~] the bank's unimpaired
12 capital and [~~certified~~] surplus [~~or the bank's total equity~~
13 ~~capital~~];

14 (13) indebtedness of an affiliate of the bank if the
15 transaction with the affiliate is subject to the restrictions and
16 limitations of 12 U.S.C. Section 371c;

17 (14) indebtedness of an operating subsidiary of the
18 bank other than a subsidiary described by Section 34.103(c)(2); and

19 (15) the portion of the indebtedness of a person
20 secured in good faith by a purchase money lien taken by the bank in
21 exchange for the sale of real or personal property owned by the bank
22 if the sale is in the best interest of the bank.

23 SECTION 11. Section 34.304(b), Finance Code, is amended to
24 read as follows:

25 (b) A state bank may pledge its assets to secure a deposit
26 of:

27 (1) any state or an agency, political subdivision, or

1 instrumentality of any state;

2 (2) the United States or an agency or instrumentality
3 of the United States;

4 (3) any federally recognized Indian tribe; or

5 (4) another entity to the same extent and subject to
6 the same limitations as may be authorized by the law of this state
7 or of the United States for any other depository institution doing
8 business in this state [~~this state, an agency or political~~
9 ~~subdivision of this state, the United States, or an instrumentality~~
10 ~~of the United States~~].

11 SECTION 12. Chapter 37, Finance Code, is amended by adding
12 Sections 37.007 and 37.008 to read as follows:

13 Sec. 37.007. TEMPORARY BRANCH OR OFFICE. (a) If the
14 banking commissioner determines that an emergency has affected and
15 will continue to affect one or more particular bank offices for an
16 extended period, either as a result of the emergency or subsequent
17 recovery operations, the banking commissioner may authorize the
18 bank or banks affected to open temporary branch offices or other
19 facilities required for bank operations for the purpose of prompt
20 restoration of access by the public to banking services.

21 (b) A temporary bank office opened under the authority of
22 Subsection (a) may remain open only for the period specified in the
23 banking commissioner's order, except that the banking commissioner
24 may extend the period the office may remain open on a finding that
25 the conditions requiring the temporary office continue to exist.
26 The bank may convert a temporary branch office to a permanent bank
27 location only by obtaining the prior written approval of the

1 banking commissioner under Section 32.203.

2 (c) If requested by the state bank regulatory agency of
3 another state that is experiencing an emergency and is contiguous
4 to this state, the banking commissioner may authorize a bank or
5 banks located in the state to open temporary offices in this state
6 for the purpose of prompt restoration of banking services to the
7 existing customers of the bank or banks, as the circumstances of
8 such emergency may require. A temporary bank office opened under
9 the authority of this subsection may remain open only for the period
10 specified in the banking commissioner's order, except that the
11 banking commissioner may extend the period the office may remain
12 open on a finding that the conditions requiring the temporary
13 office continue to exist. A bank may convert a temporary branch
14 office to a permanent bank location if permitted by and subject to
15 the conditions and requirements of Chapter 203.

16 Sec. 37.008. REGULATORY COORDINATION. (a) To ensure
17 effective coordination among and between the department and other
18 state and federal agencies and the banking industry, and to further
19 rapid restoration of banking services after an emergency, the
20 banking commissioner may:

21 (1) enter into cooperative, coordinating, or
22 information-sharing agreements with other state or federal
23 agencies or with or through organizations affiliated with or
24 representing one or more state or federal agencies;

25 (2) enter into cooperative, coordinating, or
26 information-sharing agreements with banks or banking trade
27 associations or other organizations affiliated with or

1 representing one or more banks; and

2 (3) issue interpretive statements or opinions to
3 temporarily waive or suspend regulatory requirements that threaten
4 to impede recovery and restoration of financial services.

5 (b) Disclosure of information by or to the banking
6 commissioner under this section does not constitute a waiver of or
7 otherwise affect or diminish an evidentiary privilege to which the
8 information is otherwise subject, regardless of whether the
9 disclosure is governed by a confidentiality agreement.

10 Notwithstanding other law, a party to an agreement described by
11 Subsection (a) may execute, honor, and comply with an agreement to
12 maintain confidentiality and oppose disclosure of information
13 obtained from the banking commissioner, and shall treat as
14 confidential any information obtained from the banking
15 commissioner that is entitled to confidential treatment under
16 applicable state or federal law.

17 (c) The banking commissioner shall coordinate and cooperate
18 with and assist the office of the governor in the performance of
19 duties under this chapter and other state or federal law as required
20 by Section 421.071, Government Code.

21 SECTION 13. Section 204.105(b), Finance Code, is amended to
22 read as follows:

23 (b) Among other exceptions to Subsection (a) that may be
24 required or authorized by the commissioner provided by this
25 subchapter or by rules adopted under this subtitle:

26 (1) a Texas state branch may not accept deposits of
27 less than \$100,000 from citizens or residents of the United States,

1 other than credit balances that are incidental to or arise out of
2 its exercise of other lawful banking powers, unless the Federal
3 Deposit Insurance Corporation determines that specific deposit
4 taking activities in lesser amounts do not constitute domestic
5 retail deposit activities requiring deposit insurance protection
6 within the meaning of Section 6, International Banking Act (12
7 U.S.C. Section 3104);

8 (2) a Texas state agency may not accept deposits from
9 citizens or residents of the United States, other than credit
10 balances that are incidental to or arise out of its exercise of
11 other lawful banking powers, but may accept deposits from persons
12 who are neither citizens nor residents of the United States; and

13 (3) a limitation or restriction based on the capital
14 and [~~certified~~] surplus of a Texas state bank is considered to
15 refer, as applied to a Texas state branch or agency, to the dollar
16 equivalent of the capital and surplus of the foreign bank, and if
17 the foreign bank has more than one Texas state branch or agency in
18 this state, the business transacted by all the branches and
19 agencies must be aggregated in determining compliance with the
20 limitation.

21 SECTION 14. Sections 31.002(a)(10) and 33.105(b), Finance
22 Code, are repealed.

23 SECTION 15. This Act takes effect September 1, 2007.