

## **BILL ANALYSIS**

C.S.H.B. 2282

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Pensions, Investments & Financial Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The banking commissioner promotes the safety and soundness of state banks and trust companies and has the authority to remove bad actors from the industry and to prohibit them from continuing their misconduct at other institutions. However, interested parties assert that the commissioner has a diminished ability to carry out that authority because of limitations on the issuance of a removal or prohibition order. Such parties also note that the enforcement of administrative penalties is ineffective because of the statutory limitations on the amount of those penalties that the banking commissioner can impose and the narrow grounds available to the commissioner for assessing those penalties. C.S.H.B. 2282 seeks to address these issues by making statutory changes relating to certain enforcement powers of the banking commissioner.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2282 amends the Finance Code, in a provision establishing grounds for an order by the banking commissioner of Texas to remove a present or former state bank officer, director, or employee or state trust company officer, director, employee, manager, or managing participant, as applicable, from office or employment in a state bank or state trust company and for an order to prohibit a controlling shareholder or other person participating in the affairs of a state bank or state trust company from further participation, to make the grounds for a removal order applicable as grounds for a prohibition order prohibiting a present or former state bank officer, director, or employee or state trust company officer, director, employee, manager, or managing participant, as applicable, from office or employment in a state bank. The bill makes all such removal and prohibition orders under this provision applicable also to office, employment, and participation in any other entity chartered, registered, permitted, or licensed by the commissioner. The bill expands the grounds for such removal and prohibition orders to include the commission of or participation in certain acts with regard to the affairs of other financial institutions besides a state bank or state trust company and a violation of a final cease and desist order issued by a state or federal regulatory agency against the person or an entity in which the person is or was an officer, director, or employee, rather than a violation of such an order issued in response to the same or a similar act. The bill adds as grounds for a removal or prohibition order a determination of the following: that the person made, or caused to be made, false entries in the records of a financial institution; that, because of an action by the person, the financial institution has suffered or will probably suffer financial loss or expense, or other damage; that, because of an action by the person, the interests of the depositors, creditors, shareholders, clients, or participants, as applicable, of the financial institution have been or could be prejudiced; that, because of an action by the person, the person likely would have received financial gain or other benefit if the action had not been discovered; and that an action demonstrates wilful or continuing disregard for the safety or soundness of the financial institution. The bill requires a

proposed removal or prohibition order to state the duration of the order, including whether the duration is perpetual. The bill authorizes the commissioner to make a removal or prohibition order perpetual or effective for a specific period of time, to probate the order, or to impose other conditions on the order.

C.S.H.B. 2282 requires each emergency cease and desist, removal, or prohibition order issued by the banking commissioner, in a situation where the commissioner believes immediate action is necessary to prevent immediate and irreparable harm to a bank or state trust company and to the entity's depositor, creditors, and shareholders, to state the duration of the order, including whether the duration of the order is perpetual, in addition to other information.

C.S.H.B. 2282 authorizes a person who is subject to a prohibition or removal order, regardless of the order's stated duration or date of issuance, to apply to the banking commissioner, after the expiration of 10 years from date of issuance, to be released from the order. The bill requires the application to be made under oath and in the form required by the commissioner and to be accompanied by any required fees. The bill authorizes the commissioner, in the exercise of discretion, to approve or deny an application and makes the banking commissioner's decision final and not appealable.

C.S.H.B. 2282 expands the grounds authorizing the banking commissioner to initiate an administrative penalty proceeding, make a referral to the attorney general for injunctive relief or other remedy, or pursue another appropriate action to include a violation of the Texas Banking Act, the Texas Trust Company Act, or rules enacted under either act or a violation of other applicable state law that the commissioner may enforce if the violation exposes or could have exposed the bank or trust company, as applicable, or the clients, depositors, creditors, shareholders, or participants of the bank or company, as applicable, to harm, in addition to a violation of a final order issued by the commissioner.

C.S.H.B. 2282 authorizes the banking commissioner to initiate a proceeding for an administrative penalty against another person besides a bank or state trust company. The bill requires the notice that is served on the bank, company, or person and that initiates the proceeding, for certain alleged violations, to identify corrective action that the bank, company, or other person must take to avoid or reduce the amount of a penalty that would otherwise be imposed. The bill removes a provision requiring the commissioner, in determining whether an order has been violated, to consider maintenance of procedures reasonably adopted to ensure compliance with the order. The bill requires the commissioner, in determining the amount of any administrative penalty to be imposed, to consider the financial resources and good faith of the bank, state trust company, or other person, including any corrective action taken; the gravity of the violation; the history of previous violations; an offset of the amount of the penalty by the amount of any penalty imposed by another state or federal agency for the same conduct; and any other matter that justice may require. The bill removes a provision capping the penalty imposed on a bank or state trust company for a violation of an order at \$500 dollars for each day a bank or state trust company violates a final order and instead authorizes the commissioner to impose an administrative penalty, not less than \$500 and not to exceed \$10,000 for each violation for each day the violation continues, on a bank or state trust company whose conduct constitutes a violation, except that the maximum administrative penalty that may be imposed is the lesser of \$500,000 or one percent of the bank or company assets. The bill authorizes the commissioner to impose an administrative penalty, not less than \$500 and not to exceed \$5,000 for each violation for each day the violation continues, on a person other than a bank or state trust company whose conduct constitutes a violation, except that the maximum administrative penalty that may be imposed is \$250,000. The bill authorizes the commissioner to release a final order imposing an administrative penalty or information regarding the existence of the order to the public if the commissioner concludes that the release would enhance effective enforcement of the order.

C.S.H.B. 2282 authorizes the commissioner to bring an enforcement proceeding under certain provisions of the Texas Banking Act against a person, as well as against a bank holding

company, that violates or participates in a violation of statutory provisions governing banks, an agreement filed with the commissioner under provisions governing bank holding companies, or a rule adopted by the finance commission or order issued by the commissioner.

C.S.H.B. 2282 makes conforming and nonsubstantive changes.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 2282 omits a provision contained in the original, in a provision establishing that an action causing a financial institution to suffer financial loss, expense, or other damage constitutes a ground for corrective action by the banking commissioner, specifying that those damages include an increase in the institution's risk profile. The substitute omits a provision contained in the original establishing as a ground for corrective action an action that demonstrates reckless disregard for the safety or soundness of the financial institution. The substitute omits a provision contained in the original including an entity, other than the bank or state trust company, whose best interest serves as the basis for a removal or prohibition order by the commissioner. The substitute contains a conforming change not in the original maintaining consistency of reference.

C.S.H.B. 2282 contains a provision not in the original requiring, as a condition for enforcement action by the banking commissioner against a bank, trust company, or other person committing a violation of specified laws or applicable rules, that the violation exposed or could have exposed the bank or trust company or the clients, depositors, creditors, shareholders, or participants, as applicable, of such bank or trust company to harm. The substitute differs from the original by specifying that a violation of an order issued by the banking commissioner for which the commissioner is authorized to take enforcement action is a final order of the commissioner, whereas the original specifies that such a violation is of an order issued by the commissioner. The substitute omits a provision contained in the original, in a list of violations for which the banking commissioner is authorized to take enforcement action, listing a violation of a condition imposed in writing by the commissioner in connection with any application, notice, or other request by the bank, state trust company, or other person and a violation of any written agreement with the Texas Department of Banking.

C.S.H.B. 2282 contains a provision not in the original requiring the notice of a hearing on an administrative penalty against a bank, state trust company, or other person sent by the banking commissioner, for certain alleged violations, to identify corrective action that the bank, trust company, or other person must take to avoid or reduce the amount of a penalty that would otherwise be imposed.

C.S.H.B. 2282 differs from the original, in provisions relating to a determination of the amount of any administrative penalty to be imposed, to require the banking commissioner to consider, among other factors, any good faith corrective action taken by the bank, state trust company, or other person, whereas the original includes the good faith of the bank, state trust company, or other person alleged to have committed a violation among those factors. The substitute contains a provision not in the original requiring the banking commissioner to consider, among those other factors, an offset of the amount of the penalty by the amount of any penalty imposed by another state or federal agency for the same conduct.

C.S.H.B. 2282 differs from the original by establishing a range for administrative penalties imposed on a bank or state trust company of not less than \$500 and not more than \$10,000 for each violation for each day the violation continues, with the penalty cap set at the lesser of \$500,000 or one percent of the bank or trust company assets, as applicable, whereas the original sets that administrative penalty at \$10,000 for each violation for each day the violation continues

and caps the penalty at the lesser of \$1 million or one percent of the bank or company assets.

C.S.H.B. 2282 differs from the original by establishing a range for administrative penalties imposed on a person other than a bank or state trust company of not less than \$500 and not more than \$5,000 for each violation for each day the violation continues, with the penalty cap set at \$250,000, whereas the original sets the penalty imposed on such a person at \$5,000 for each violation for each day the violation continues and caps the penalty at \$500,000.