

## **BILL ANALYSIS**

H.B. 1664  
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Investments & Financial Services  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Current law provides for state-chartered banks and trust companies to be regulated by the Texas Department of Banking and the Banking Commissioner of Texas. Interested parties report a need to implement certain regulatory improvements and clarifications in the law regarding state-chartered banks and trust companies. H.B. 1664 seeks to provide such improvements and clarifications by making technical corrections to restate and clarify current law and eliminate potential ambiguities; clarifying the powers of state-chartered banks and trust companies; clarifying the regulatory authority of the department and the commissioner; and harmonizing state law with revised federal statutes relating to interstate merger, branching, and host state authority.

### **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**

H.B. 1664 amends the Finance Code to authorize the Banking Commissioner of Texas, in certain matters relating to state banks and state trust companies, to subpoena witnesses and require and compel by subpoena the production of documents not voluntarily produced and, if a person refuses to obey such a subpoena, to authorize a district court of Travis County on application by the commissioner to issue an order requiring the person to appear before the commissioner and produce documents or give evidence regarding the matter under examination or investigation. The bill specifies that the disclosure of information to the commissioner pursuant to such a subpoena does not constitute a waiver of or otherwise affect or diminish an evidentiary privilege to which the information is otherwise subject. The bill specifies that such a subpoena issued to a financial institution is not subject to statutory provisions prescribing the method for compelled discovery of customer financial records.

H.B. 1664 authorizes a state bank to establish one or more deposit production offices, in addition to loan production offices, and revises the purposes for which these offices may be established to include soliciting deposit accounts, applications for loans, or equivalent transactions; performing ministerial duties relating to such solicitations; and conducting other activities as permitted by rules adopted under statutory provisions governing state banks. The bill removes provisions authorizing a state bank to establish an office for the purpose of performing ministerial duties related to consummating a granted loan. The bill removes provisions requiring a credit decision, commitment to make a loan, and preparation of a check or other draft to dispense loan proceeds to occur at the bank's home office or a branch office and removes provisions prohibiting such events from occurring at a loan production office.

H.B. 1664 revises notification requirements for establishing a proposed deposit or loan production office of a bank to require the bank to notify the commissioner in writing of the location of and activities to be conducted at a proposed office. The bill authorizes the bank to

establish the proposed office beginning on the 31st day after the date the commissioner receives the bank's notice, unless the commissioner specifies that the proposed office be established on another date. The bill authorizes the commissioner to extend the 30-day period on a determination that the bank's notice raises issues that require additional information or time for analysis. The bill authorizes the bank, if the period is extended, to establish the proposed deposit or loan production office only with the prior written approval of the commissioner.

H.B. 1664 prohibits a state bank and a state trust company from disclosing to an advisory director or advisory manager, as applicable, confidential information pertaining to the bank or trust company or the bank's or trust company's customers unless the entity's board adopts a resolution designating the advisory director or advisory manager, as applicable, as a person who is officially connected to the bank or trust company and describing a reasonable business purpose for the disclosure of the information, and unless the disclosure is made under a written confidentiality agreement between the bank or trust company and the advisory director or advisory manager, as applicable.

H.B. 1664 authorizes the commissioner, on application by the board of a state bank, to grant the board approval to hold regular meetings on a less frequent basis than one regular meeting per month. The bill authorizes the commissioner to revoke or modify a prior approval to hold meetings on a less frequent basis if the commissioner determines that more frequent regular meetings of the board are necessary to promote the safety and soundness of the bank.

H.B. 1664 revises provisions establishing the required manner in which a state bank disposes of certain real property to retain requirements that a state bank dispose of the property not later than the fifth anniversary of the date the property was acquired, ceases to be used as a state bank facility, or ceases to be a facility used by the state bank facility for holding, improving, and occupying as an incident to future expansion of the state bank's facilities and to remove the requirement that a state bank dispose of certain unimproved and unoccupied real property that was acquired for future expansion of the bank's facilities not later than the second anniversary of the date the real property ceases to be a bank facility. The bill establishes comparable disposition requirements for a state trust company. The bill prohibits a state trust company, without the prior written approval of the commissioner, from directly or indirectly investing an amount in excess of the company's restricted capital, rather than in excess of 60 percent of the company's restricted capital, in state trust company facilities, furniture, fixtures, and equipment, and removes a provision requiring the state trust company to comply with regulatory accounting principles in accounting for its investment in and depreciation of such real property.

H.B. 1664 revises provisions on interests a state bank is authorized to hold to refer to nonparticipating royalty interests, rather than nonworking mineral or royalty interests, and expands the conditions under which a state bank has authority to hold such interests to include the authorization to hold interests if the state bank retains the interest in a sale of property acquired as necessary to avoid or minimize a loss on a loan or investment previously made in good faith, and if the interest is nonparticipating due to the fact that the interest is nonpossessory, and does not bear executive rights, the right of ingress and egress, the right to receive bonus payments, or the right to receive delay rentals.

H.B. 1664 specifies that the commissioner's authority to serve a proposed removal or prohibition order, as appropriate, on a present or former officer, director, manager, managing participant, or employee of a state bank or state trust company, as applicable, from office or employment is conditioned on whether the order appears to be necessary and in the best interest of the public, rather than necessary and in the best interest of the bank or trust company involved and its depositors, clients, creditors, shareholders, or participants, as applicable.

H.B. 1664 includes among the activity a state bank or a state trust company that has been found by the commissioner to be in hazardous condition and was thus appointed a supervisor is prohibited from taking removing an executive officer or director, changing the number of

executive officers or directors, or having any other change in the position of executive officer or director during a period of supervision, without prior approval of the commissioner or the supervisor or as otherwise permitted or restricted by the order of supervision.

H.B. 1664 redefines "bank supervisory agency" to include the Bureau of Consumer Financial Protection in provisions relating to bank holding companies and interstate bank operations.

H.B. 1664 clarifies that the laws of Texas, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, apply to an interstate branch located in Texas to the same extent state law would apply if such a branch were a branch of an out-of-state national bank in Texas, rather than a national bank with its main office located in Texas, except to the extent otherwise provided under federal law. The bill authorizes an out-of-state bank that establishes an interstate branch in Texas to conduct any activity at the branch that is permissible under the laws of the bank's home state, to the extent the activity is permissible for a Texas state bank or for a branch of an out-of-state national bank in Texas. The bill specifies that statutory provisions regulating bank holding companies and interstate bank operations do not limit or affect the authority of the home state regulator of a bank's home state to enforce any law applicable to a branch of an out-of-state state bank; of a law enforcement officer, a regulatory supervisor, other than the commissioner, or another official of the state to enforce the laws of the state applicable to a branch of an out-of-state state bank; or of the state to adopt, apply, or administer any tax or method of taxation to a bank, bank holding company, or foreign bank, or any affiliate of such entities, to the extent that the tax or tax method is otherwise permissible by or under federal law.

H.B. 1664 establishes that a cooperative agreement entered into by the commissioner with another bank supervisory agency, a functional regulatory agency, or an organization affiliated with or representing one or more bank supervisory agencies does not limit the authority of a state official who is not a party to the agreement to enforce state laws applicable to a branch of an out-of-state bank that is located in Texas. The bill authorizes the commissioner, with written notice to the home state regulator and subject to the terms of any applicable cooperative agreement with the home state regulator, to take any enforcement action the commissioner would be empowered to take if the branch were a Texas state bank or state savings bank, if the commissioner determines that an interstate branch maintained by an out-of-state state bank in Texas is being operated in violation of a Texas law that is also applicable to the branch under federal law, including laws governing community reinvestment, fair lending, and consumer protection. The bill removes provisions requiring the commissioner to promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, to consult and cooperate with the home state regulator in pursuing and resolving the enforcement action.

H.B. 1664 removes a provision conditioning the authority of an out-of-state state bank to establish a de novo branch in Texas on whether the laws of the home state of the out-of-state state bank would permit a Texas bank to establish and maintain a de novo branch in that state under substantially the same terms and conditions.

H.B. 1664 authorizes the commissioner, with written notice to the home state regulator and subject to the terms of any applicable cooperative agreement with the home state regulator, to examine an interstate branch maintained by an out-of-state state bank in Texas for the purpose of determining whether the branch is in compliance with a Texas law that is also applicable to the branch under federal law. The bill authorizes the commissioner, if expressly permitted under and subject to the terms of any cooperative agreement with the home state regulator, or if the bank has been determined to be in a troubled condition by the home state regulator or the bank's appropriate federal banking agency, to participate in the examination of the bank by the home state regulator in order to ascertain whether the activities of the Texas branch are being conducted in an unsafe or unsound manner. The bill sets out the conditions under which a bank is considered to be in troubled condition for the purpose of such examinations. The bill removes

provisions authorizing the commissioner to prescribe requirements for periodic reports from an out-of-state bank that operates a branch in Texas.

H.B. 1664 repeals a provision prohibiting, under certain conditions, an out-of-state bank from acquiring a Texas bank in an interstate merger transaction if the Texas bank has not been in existence and in continuous operation for at least five years by a certain date.

H.B. 1664 repeals the following provisions of the Finance Code:

- Section 201.009(c)
- Section 203.003(c)
- Section 203.005

**EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.