

## **BILL ANALYSIS**

Senate Research Center  
83R4097 CLG-F

S.B. 805  
By: Carona  
Business & Commerce  
3/11/2013  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Department of Banking (TDB) regulates state-chartered banks and trust companies. Questions have arisen regarding the authority of the commissioner of banking to obtain information from persons outside the bank under examination, such as a former employee or former director of the bank or the bank's holding company. S.B. 805 resolves this issue, clarifies and enhances TDB's oversight ability, and updates statutes pertaining to banks and to trust companies.

S.B. 805 authorizes the commissioner of banking to investigate persons outside the bank or trust company under examination. Additionally, S.B. 805 revises certain requirements and rules to establish parity with national banks and federal statutes, changes the limits for investment in trust company fixed assets, and clarifies the instances under which advisory directors may be privy to confidential regulatory information.

As proposed, S.B. 805 amends current law relating to the regulation of banks, trust companies, and bank holding companies.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 11.107(c), Finance Code, to authorize the presiding officer of the Texas Finance Commission (presiding officer) (finance commission) to adopt rules and procedures as the presiding officer considers necessary for the orderly operation of the finance commission and for communication among the finance commission, Texas Department of Banking (TDB), rather than the department, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner.

SECTION 2. Amends Section 31.002(a)(8), Finance Code, to redefine "branch."

SECTION 3. Amends Section 31.105, Finance Code, by amending Subsections (c) and (d) and adding Subsections (c-1) and (e), as follows:

(c) Authorizes the banking commissioner to:

- (1) Creates this subdivision from existing text and makes no further changes; and
- (2) subpoena witnesses and require and compel by subpoena the production of documents not voluntarily produced.

(c-1) Authorizes a district court of Travis County, on application by the banking commissioner, to issue an order requiring the person to appear before the banking commissioner and produce documents or give evidence regarding the matter under examination or investigation if a person refuses to obey a subpoena.

(d) Provides that disclosure of information to the banking commissioner pursuant to a subpoena issued under this section or an examination request does not constitute a waiver of or otherwise affect or diminish an evidentiary privilege to which the information is otherwise subject.

(e) Provides that a subpoena issued to a financial institution under this section is not subject to Section 59.006 (Discovery of Customer Records).

SECTION 4. Amends Section 32.204, Finance Code, as follows:

Sec. 32.204. New heading: DEPOSIT OR LOAN PRODUCTION OFFICES. (a) Provides that a state bank may establish one or more deposit production offices, for the purpose of:

(1) soliciting deposit accounts, applications for loans, or equivalent transactions;

(2) performing ministerial duties related to solicitations described by Subdivision (1); and

(3) conducting other activities as permitted by rules adopted under this subtitle.

Deletes existing text authorizing a state bank to establish one or more loan production offices for the purposes of soliciting certain transactions, accepting loan applications, and performing certain duties related to consummating a granted loan, such as execution of loan documents and dispensation of loan proceeds by check or other draft, including a certified or cashier's check, but not by cash. Deletes existing text 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 prohibits that from occurring at a loan production office.

Makes nonsubstantive and conforming changes.

(b) Requires the bank to notify the banking commissioner in writing of the location of and activities to be conducted at a proposed deposit or loan production office of the bank. Authorizes the bank to establish the proposed office beginning on the 31st day after the date the banking commissioner receives the bank's notice unless the banking commissioner specifies that the proposed office be established on an earlier or later date.

(c) Authorizes the banking commissioner to extend the 30-day period prescribed by Subsection (b) on a determination that the bank's notice raises issues that require additional information or time for analysis. 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 banking commissioner.

Deletes existing text requiring the bank to notify the banking commissioner in writing before the 31st day before the date of establishment of a loan production office, except that the banking commissioner is authorized to waive or shorten the period if the banking commissioner does not have a significant supervisory or regulatory concern regarding the bank or its planned loan production office. Makes nonsubstantive changes.

SECTION 5. Amends Section 33.104, Finance Code, as follows:

Sec. 33.104. ADVISORY DIRECTOR. (a) Creates this subsection from existing text and makes no further changes.

(b) Prohibits a state bank from disclosing to an advisory director confidential information pertaining to the bank or the bank's customers unless the board of directors (board) of, or a person or group of persons acting in a comparable capacity, for a state bank, adopts a resolution that designates the advisory director as a person who is officially connected to the bank and that describes the purpose for disclosure of the information, which is required to be a reasonable business purpose; and the disclosure is made under a written confidentiality agreement between the bank and the advisory director.

SECTION 6. Amends Section 33.105, Finance Code, as follows:

Sec. 33.105. REQUIRED MONTHLY BOARD MEETING. (a) Requires the board of a state bank to hold at least one regular meeting each month, except as provided by Subsection (b). Makes a nonsubstantive change.

(b) Authorizes the banking commissioner, on application by the board, to grant the board approval to hold regular meetings on a less frequent basis than the period prescribed by Subsection (a). Authorizes the banking commissioner to revoke or modify a prior approval granted under this subsection if the banking commissioner determines that more frequent regular meetings of the board are necessary to promote the safety and soundness of the bank.

(c) Creates this subsection from existing text and makes no further changes.

SECTION 7. Amends Section 34.003(c), Finance Code, as follows:

(c) Requires a state bank to dispose of real property subject to this section not later than the fifth anniversary of the date the real property was acquired except as otherwise provided by ruled adopted under this subtitle, ceases to be used as a bank facility, or ceases to be a bank facility as provided by Section 34.002(b) (relating to the date real property ceases to be a bank facility). Deletes existing text requiring a state bank to dispose of real property subject to this section not later than the second anniversary of the date it ceases to be a bank facility as provided by Section 34.002 (b). Makes nonsubstantive changes.

SECTION 8. Section 34.004, Finance Code, as follows:

Sec. 34.004. New heading: RETENTION OF NONPARTICIPATING ROYALTY INTERESTS. (a) Authorizes a state bank, notwithstanding Section 34.003(a) (relating to the prohibiting of a bank from acquiring real property except under certain circumstances), to hold nonparticipating royalty interests, rather than a nonworking mineral or royalty interests, if:

(1) the state bank acquires the interest pursuant to Section 34.003(a)(3) (relating to the acquisition of real property to avoid or minimize loss on a loan or investment previously made in good faith) or retains the interest in a sale of property acquired under that section;

(2) the interest is nonparticipating due to the fact the interest:

(A) is nonpossessory;

(B) does not bear executive rights, the right of ingress and egress, the right to receive bonus payments, or the right to receive delay rentals; and

(C) is accordingly not subject to expenses of exploration, development, production, operation, maintenance, or abandonment, or other expenses associated with extracting and

marketing the minerals subject to the interest, rather than the rights or interest;

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

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

(5) the banking commissioner determines that the possession of such interests, rather than the rights and interests, is not inconsistent with the safety and soundness of the state bank.

(b) Authorizes the banking commissioner to order a state bank that holds nonparticipating royalty interests, rather than nonworking mineral or royalty interests, to divest such interests at any time if the banking commissioner determines that continued ownership of such interests is detrimental to the state bank.

(c) Provides that, subject to compliance with this section, nonparticipating royalty interests, rather than nonworking mineral or royalty interests, are not considered to be real property for purposes of this subtitle.

Makes conforming and nonsubstantive changes.

SECTION 9. Amends Section 35.003(b), Finance Code, to authorize the banking commissioner to serve a proposed removal or prohibition order, as appropriate, on a person alleged to have committed or participated in the action, if the banking commissioner has grounds for action under Subsection (a) (relating to the banking commissioner having grounds to remove or prohibit certain individuals from office in certain circumstances) and finds that a removal or prohibition order appears to be necessary and in the best interest of the public, rather than of the bank involved and its depositors, creditors, or shareholders.

SECTION 10. Amends Section 35.106, Finance Code, to prohibit a bank, during a period of supervision and without the prior approval of the banking commissioner or the supervisor or as otherwise permitted or restricted by the order of supervision, from taking certain actions, including 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.

SECTION 11. Amends Section 181.002(a), Finance Code, by adding Subdivision (47-a), to define "surplus."

SECTION 12. Amends Section 181.104, Finance Code, by amending Subsections (d) and (f) and adding Subsections (f-1) and (g), as follows:

(d) Provides that disclosure of information to the banking commissioner pursuant to a subpoena issued under this section, in addition to an examination request, does not constitute a waiver of or otherwise affect or diminish an evidentiary privilege to which the information is otherwise subject.

(f) Authorizes the banking commissioner to subpoena witnesses and require and compel by subpoena the production of documents not voluntarily produced, in addition to the authorization to administer oaths and examine persons under oath on any subject that the banking commissioner considers pertinent to the financial condition or the safety and soundness of the activities of a state trust company.

(f-1) Authorizes a district court of Travis County, on application by the banking commissioner, to issue an order requiring the person to appear before the banking commissioner and produce documents or give evidence regarding the matter under examination or investigation if a person refuses to obey a subpoena.

(g) Provides that a subpoena issued to a financial institution under this section is not subject to Section 59.006 (Discovery of Customer Records).

SECTION 13. Amends Section 183.104, Finance Code, as follows:

Sec. 183.104. ADVISORY DIRECTOR OR ADVISORY MANAGER. (a) Creates this subsection from existing text and makes no further changes.

(b) Prohibits a state trust company from disclosing to an advisory director or advisory manager confidential information pertaining to the state trust company or the company's clients unless the board adopts a resolution that designates the advisory director or advisory manager as a person who is officially connected to the trust company and that describes the purpose for disclosure of the information, which is required to be a reasonable business purpose, and the disclosure is made under a written confidentiality agreement between the state trust company and the advisory director or advisory manager.

SECTION 14. Amends Sections 184.002(a) and (c), Finance Code, as follows:

(a) Prohibits a state trust company, without the prior written approval of the banking commissioner, from directly or indirectly investing an amount in excess of the company's restricted capital, rather than 60 percent of the its restricted capital, in state trust company facilities, furniture, fixtures, and equipment.

(c) Requires a state trust company to dispose of any real property subject to Subsection (a) not later than the fifth anniversary of the date the real property was acquired, except as otherwise provided by rules adopted under this subtitle; ceases to be used as a state trust company facility; or ceases to be a state trust company facility as provided by Subsection (b) (relating to the date real property ceases to be a bank facility). Deletes existing text requiring a state trust company to comply with regulatory accounting principles in accounting for its investment in and depreciation of state trust company facilities, furniture, fixtures, and equipment.

SECTION 15. Amends Section 185.003(b), Finance Code, to authorize the banking commissioner to serve a proposed removal or prohibition order, as appropriate, on a person alleged to have committed or participated in a violation or other conduct, if the banking commissioner has grounds for action under Subsection (a) (relating to the banking commissioner having grounds to remove or prohibit certain individuals from office in certain circumstances) and finds that a removal or prohibition order appears to be necessary and in the best interest of the public, rather than of the trust company involved and its clients, creditors, shareholders, or participants.

SECTION 16. Amends Section 185.106, Finance Code, to prohibit a state trust company, during a period of supervision and without the prior approval of the banking commissioner or the supervisor or as otherwise permitted or restricted by the order of supervision, from taking certain actions, including 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.

SECTION 17. Amends Section 187.103(a), Finance Code, to delete existing text providing that Section 203.005 (Required Age of Acquired Bank) applies to the transaction if the institution to be acquired is a bank or a state savings bank.

SECTION 18. Amends Section 187.105(a), Finance Code, to delete existing text authorizing a trust office of an out-of-state trust company to be acquired or established in this state under this

subchapter if the banking commissioner finds, if a state bank is being acquired, the applicable requirements of Section 203.005 have been met.

SECTION 19. Amends Section 201.002(a)(7), Finance Code, to redefine "bank supervisory agency."

SECTION 20. Amends Section 201.004, Finance Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Provides that the laws of this state, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, apply to an interstate branch located in this state to the same extent the laws of this state would apply if the branch in this state were a branch of an out-of-state national bank in this state, rather than a national bank with its main office located in this state, except to the extent otherwise provided under federal law. Authorizes an out-of-state state bank that establishes an interstate branch in this state under this subtitle to conduct any activity at the branch in this state 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 this state.

(d) Provides that this subtitle does not limit or affect the authority of:

(1) 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;

(2) a law enforcement officer, a regulatory supervisor, other than the banking commissioner, or another official of this state to enforce the laws of this state applicable to a branch of an out-of-state state bank; or

(3) this 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 a bank, bank holding company, or foreign bank, to the extent that the tax or tax method is otherwise permissible by or under the United States Constitution or other federal law.

SECTION 21. Amends Section 201.005, Finance Code, by adding Subsection (c), to provide that a cooperative agreement entered into by the banking commissioner under this section does not limit the authority of a law enforcement officer, regulatory supervisor, or other official of this state who is not a party to the agreement to enforce the laws of this state applicable to a branch of an out-of-state state bank located in this state.

SECTION 22. Amends Section 201.009(b), Finance Code, as follows:

(b) Authorizes the banking 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 banking commissioner would be empowered to take if the branch were a Texas state bank or state savings bank, as the case may be, if the banking commissioner determines that an interstate branch maintained by an out-of-state state bank in this state is being operated in violation of law of this state. Deletes existing text authorizing the banking commissioner to take any enforcement action the banking commissioner would be empowered to take if the branch were a Texas state bank or state savings bank, as the case may be, except that the commissioner is required 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, if the banking commissioner determines that an interstate branch maintained by an out-of-state state bank in this state is being operated in violation of a law of this state or in an unsafe and unsound manner.

SECTION 23. Amends Section 203.002(a), Finance Code, to delete existing text authorizing an out-of-state bank to establish a de novo branch in this state if the laws of the home state of the out-of-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 as set forth in this subchapter. Makes nonsubstantive changes.

SECTION 24. Amends Section 203.003(a), Finance Code, to authorize one or more Texas banks to enter into an interstate merger transaction with one or more out-of-state banks under this chapter, and authorizes an out-of-state bank resulting from the transaction to maintain and operate the branches in this state of a Texas bank that participated in the transaction, subject to Section 203.004, rather than Sections 203.004 and 203.005 (Required Age of Acquired Bank).

SECTION 25. Amends Section 203.007, Finance Code, as follows:

Sec. 203.007. New heading: EXAMINATIONS. (a) Provides that, with respect to an interstate branch maintained by an out-of-state state bank in this state, the banking commissioner:

(1) is authorized to examine the branch for the purpose of determining whether the branch is in compliance with the laws of this state that are applicable under Section 24(j), Federal Deposit Insurance Act (12 U.S.C. Section 1831a(j)), including laws governing community reinvestment, fair lending, and consumer protection, with written notice to the home state regulator and subject to the terms of any applicable cooperative agreement with the home state regulator; and

(2) is authorized to participate in the examination of the bank by the home state regulator to ascertain whether the activities of the branch in this state are being conducted in an unsafe or unsound manner 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.

Deletes existing text authorizing the banking commissioner to make examinations of a branch established and maintained in this state pursuant to this chapter by an out-of-state bank as the banking commissioner considers necessary to determine whether the branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. Deletes existing text providing that Sections 31.105 (Examination Required), 31.106 (Cost of Regulation), 31.107 (Regulation and Examination of Related Entities), or 96.054 (Examinations), 96.055 (Additional Examinations), 96.056 (Access to Books and Records), and 96.057 (Subpoena; Administration of Oath or Affirmation), as appropriate, apply to the examinations. Makes nonsubstantive changes.

(b) Provides that for purposes of this section, a bank is considered to be in a troubled condition if the bank:

(1) has a composite rating, as determined in the bank's most recent report of examination, of four or five under the Uniform Financial Institutions Ratings System;

(2) is subject to a proceeding initiated by the Federal Deposit Insurance Corporation for termination or suspension of deposit insurance; or

(3) is subject to a proceeding initiated by the home state regulator to vacate, revoke, or terminate the bank's charter; liquidate the bank; or appoint a receiver for the bank.

Deletes existing text authorizing the banking commissioner to prescribe requirements for periodic reports from an out-of-state bank that operates a branch in Texas pursuant to this chapter. Deletes existing text requiring that reporting requirements prescribed by the banking commissioner under this section be consistent with the reporting requirements applicable to Texas state banks or state savings banks, as appropriate, and appropriate to discharge the responsibilities of the commissioner under this chapter.

SECTION 26. Repealer: Section 201.009(c) (relating to the banking commissioner's authorization to enforce the laws of this state against certain entities), Finance Code.

Repealer: 203.003(c) (relating to the prohibition on an out-of-state bank that does not operated a branch in this state from establishing and maintaining a branch through the acquisition of an existing Texas bank), Finance Code.

Repealer: 203.005 (Required Age of Acquired Bank), Finance Code.

SECTION 27. Effective date: upon passage or September 1, 2013.