

By: Eltife

S.B. No. 1549

A BILL TO BE ENTITLED

AN ACT

relating to certain administrative procedures and enforcement authority relating to state banks, state trust companies, and bank holding companies.

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

SECTION 1. The heading to Section 31.201, Finance Code, is amended to read as follows:

Sec. 31.201. BANKING COMMISSIONER HEARING; INFORMAL DISPOSITION.

SECTION 2. Section 31.201, Finance Code, is amended by adding Subsection (d) to read as follows:

(d) The banking commissioner may informally dispose of a matter within the jurisdiction of and before the banking commissioner by consent order, agreed settlement, or default.

SECTION 3. Subchapter A, Chapter 35, Finance Code, is amended by adding Section 35.0001 to read as follows:

Sec. 35.0001. APPLICABILITY TO BANK SUBSIDIARIES. This subchapter applies to a subsidiary of a state bank, a present or former officer, director, or employee of a subsidiary, or a controlling shareholder or other person participating in the affairs of a subsidiary in the same manner as the subchapter applies to a state bank, a present or former officer, director, or employee of a state bank, or a controlling shareholder or other person participating in the affairs of a state bank.

SECTION 4. Section 35.002, Finance Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) A proposed cease and desist order may require an officer, employee, or director of a state bank, or the bank itself acting through an authorized person, to cease or desist from a violation or other practice or to take affirmative action to correct the conditions resulting from a violation or other practice, including the payment of restitution or other action that the banking commissioner determines is appropriate.

SECTION 5. Subchapter A, Chapter 35, Finance Code, is amended by adding Section 35.0035 to read as follows:

Sec. 35.0035. REMOVAL OR PROHIBITION ORDERS IN RESPONSE TO CERTAIN CRIMINAL OFFENSES. (a) For purposes of this section, a person is considered to have been finally convicted of an offense if the person's case is not subject to further appellate review and:

- (1) a sentence was imposed on the person;
- (2) the person received probation or community supervision, including deferred adjudication community supervision; or
- (3) the court deferred final disposition of the person's case.

(b) The banking commissioner has grounds to remove or prohibit a present or former officer, director, or employee of a state bank from office or employment in, or prohibit a controlling shareholder or other person participating in the affairs of a state bank from further participation in the affairs of, a state bank or any other entity chartered, registered, permitted, or licensed by

1 the banking commissioner if the person has been finally convicted
2 of a felony offense involving:

3 (1) a bank or other financial institution;

4 (2) dishonesty; or

5 (3) breach of trust.

6 (c) If the banking commissioner has grounds for action under
7 Subsection (b), the banking commissioner may serve a removal or
8 prohibition order, as appropriate, on the person who has been
9 finally convicted of a felony offense. The banking commissioner
10 shall also serve a copy of the order on any state bank that the
11 person is affiliated with at the time of service of the order.

12 (d) An order issued under this section becomes effective
13 immediately on service and continues in effect unless the order is:

14 (1) stayed or terminated by the banking commissioner;

15 (2) set aside by the banking commissioner after a
16 hearing; or

17 (3) stayed or vacated on appeal.

18 (e) Not later than the 30th day after the date an order is
19 issued under this section, the person against whom the order is
20 issued may request in writing a hearing before the banking
21 commissioner to show that the person's continued service to a state
22 bank or participation in the affairs of a state bank does not, or is
23 unlikely to, threaten the interests of the depositors, creditors,
24 or shareholders of the state bank or the public confidence in the
25 state bank.

26 (f) Not later than the 30th day after the date the request
27 for a hearing is received under this section, the banking

1 commission shall hold the hearing, unless the party requesting the
2 hearing requests a later date. At the hearing, the party requesting
3 the hearing has the burden of proof.

4 (g) After the hearing, the banking commissioner may affirm,
5 modify, or set aside, in whole or in part, the order. An order
6 affirming or modifying the order is immediately final for purposes
7 of enforcement and appeal. The order may be appealed as provided by
8 Sections [31.202](#), [31.203](#), and [31.204](#).

9 SECTION 6. Subchapter B, Chapter 35, Finance Code, is
10 amended by adding Section 35.1001 to read as follows:

11 Sec. 35.1001. APPLICABILITY TO BANK SUBSIDIARIES. This
12 subchapter applies to a subsidiary of a state bank, a present or
13 former officer, director, or employee of a subsidiary, or a
14 controlling shareholder or other person participating in the
15 affairs of a subsidiary in the same manner as the subchapter applies
16 to a state bank, a present or former officer, director, or employee
17 of a state bank, or a controlling shareholder or other person
18 participating in the affairs of a state bank.

19 SECTION 7. The heading to Section [181.201](#), Finance Code, is
20 amended to read as follows:

21 Sec. 181.201. BANKING COMMISSIONER HEARING; INFORMAL
22 DISPOSITION.

23 SECTION 8. Section [181.201](#), Finance Code, is amended by
24 adding Subsection (d) to read as follows:

25 (d) The banking commissioner may informally dispose of a
26 matter within the jurisdiction of and before the banking
27 commissioner by consent order, agreed settlement, or default.

SECTION 9. Subchapter A, Chapter 185, Finance Code, is amended by adding Section 185.0001 to read as follows:

Sec. 185.0001. APPLICABILITY TO STATE TRUST COMPANY SUBSIDIARIES. This subchapter applies to a subsidiary of a state trust company, a present or former officer, director, manager, managing participant, or employee of a subsidiary, or a controlling shareholder or other person participating in the affairs of a subsidiary in the same manner as the subchapter applies to a state trust company, a present or former officer, director, manager, managing participant, or employee of a state trust company, or a controlling shareholder or other person participating in the affairs of a state trust company.

SECTION 10. Section 185.002, Finance Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) A proposed cease and desist order may require an officer, employee, director, manager, or managing participant of a state trust company, or the state trust company itself acting through an authorized person, to cease or desist from a violation or other practice or to take affirmative action to correct the conditions resulting from a violation or other practice, including the payment of restitution or other action that the banking commissioner determines is appropriate.

SECTION 11. Section 185.003(a), Finance Code, is amended to read as follows:

(a) The banking commissioner has grounds to remove or prohibit a present or former officer, director, manager, managing participant, or employee of a state trust company from office or

1 employment in, or prohibit a controlling shareholder or participant
2 or other person participating in the affairs of a state trust
3 company from further participation in the affairs of, the state
4 trust company or any other entity chartered, registered, permitted,
5 or licensed by the banking commissioner if the banking commissioner
6 determines from examination or other credible evidence that:

7 (1) the person:

8 (A) intentionally committed or participated in
9 the commission of an act described by Section 185.002(a) with
10 regard to the affairs of a financial institution, as defined by
11 Section 201.101;

12 (B) violated a final cease and desist order
13 issued by a state or federal regulatory agency against the person or
14 an entity in which the person is or was an officer, director, or
15 employee; or

16 (C) made, or caused to be made, false entries in
17 the records of a financial institution;

18 (2) because of this action by the person:

19 (A) the financial institution has suffered or
20 will probably suffer financial loss or expense, or other damage;

21 (B) the interests of the clients, depositors,
22 creditors, or shareholders of the financial institution have been
23 or could be prejudiced; or

24 (C) the person has received financial gain or
25 other benefit by reason of the action, or likely would have if the
26 action had not been discovered; and

27 (3) that action by the person:

1 (A) involves personal dishonesty on the part of
2 the person; or

3 (B) demonstrates wilful or continuing disregard
4 for the safety or soundness of the financial institution.

5 SECTION 12. Subchapter A, Chapter 185, Finance Code, is
6 amended by adding Section 185.0035 to read as follows:

7 Sec. 185.0035. REMOVAL OR PROHIBITION ORDERS IN RESPONSE TO
8 CERTAIN CRIMINAL OFFENSES. (a) For purposes of this section, a
9 person is considered to have been finally convicted of an offense if
10 the person's case is not subject to further appellate review and:

11 (1) a sentence was imposed on the person;

12 (2) the person received probation or community
13 supervision, including deferred adjudication community
14 supervision; or

15 (3) the court deferred final disposition of the
16 person's case.

17 (b) The banking commissioner has grounds to remove or
18 prohibit a present or former officer, director, manager, managing
19 participant, or employee of a state trust company from office or
20 employment in, or prohibit a controlling shareholder or participant
21 or other person participating in the affairs of a state trust
22 company from further participation in the affairs of, the state
23 trust company or any other entity chartered, registered, permitted,
24 or licensed by the banking commissioner if the person has been
25 finally convicted of a felony offense involving:

26 (1) a financial institution, as defined by Section
27 [201.101](#);

1 (2) dishonesty; or

2 (3) breach of trust.

3 (c) If the banking commissioner has grounds for action under
4 Subsection (b), the banking commissioner may serve a removal or
5 prohibition order, as appropriate, on the person who has been
6 finally convicted of a felony offense. The banking commissioner
7 shall also serve a copy of the order on any state trust company that
8 the person is affiliated with at the time of service of the order.

9 (d) An order issued under this section becomes effective
10 immediately on service and continues in effect unless the order is:

11 (1) stayed or terminated by the banking commissioner;

12 (2) set aside by the banking commissioner after a
13 hearing; or

14 (3) stayed or vacated on appeal.

15 (e) Not later than the 30th day after the date an order is
16 issued under this section, the person against whom the order is
17 issued may request in writing a hearing before the banking
18 commissioner to show that the person's continued service to a state
19 trust company or participation in the affairs of a state trust
20 company does not, or is unlikely to, threaten the interests of the
21 clients, depositors, creditors, or shareholders of the state trust
22 company or the public confidence in the state trust company.

23 (f) Not later than the 30th day after the date a request for
24 a hearing is received under this section, the banking commissioner
25 shall hold the hearing, unless the party requesting the hearing
26 requests a later date. At the hearing, the party requesting the
27 hearing has the burden of proof.

1 (g) After the hearing, the banking commissioner may affirm,
2 modify, or set aside, in whole or in part, the order. An order
3 affirming or modifying the order is immediately final for purposes
4 of enforcement and appeal. The order may be appealed as provided by
5 Sections 181.202, 181.203, and 181.204.

6 SECTION 13. Subchapter B, Chapter 185, Finance Code, is
7 amended by adding Section 185.1001 to read as follows:

8 Sec. 185.1001. APPLICABILITY TO STATE TRUST COMPANY
9 SUBSIDIARIES. This subchapter applies to a subsidiary of a state
10 trust company, a present or former officer, director, manager,
11 managing participant, or employee of a subsidiary, or a controlling
12 shareholder or other person participating in the affairs of a
13 subsidiary in the same manner as the subchapter applies to a state
14 trust company, a present or former officer, director, manager,
15 managing participant, or employee of a state trust company, or a
16 controlling shareholder or other person participating in the
17 affairs of a state trust company.

18 SECTION 14. Section 202.005, Finance Code, is amended by
19 adding Subsection (a-1) to read as follows:

20 (a-1) The grounds, procedures, and effects of an
21 enforcement proceeding brought under this section apply to a bank
22 holding company, an officer, director, or employee of a bank
23 holding company, or a controlling shareholder or other person
24 participating in the affairs of a bank holding company in the same
25 manner as the grounds, procedures, and effects apply to a state
26 bank, an officer, director, or employee of a state bank, or a
27 controlling shareholder or other person participating in the

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1 affairs of a state bank.

2 SECTION 15. This Act takes effect September 1, 2015.