By:  Campbell S.B. No. 1823

(In the Senate - Filed March 7, 2019; March 18, 2019, read first time and referred to Committee on Business & Commerce; April 1, 2019, reported favorably by the following vote: Yeas 7, Nays 0; April 1, 2019, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Hancock              X

Nichols              X

Campbell             X

Creighton            X

Menéndez                       X

Paxton               X

Schwertner           X

Whitmire             X

Zaffirini                      X

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of state banks, state trust companies, and third-party service providers of state banks and state trust companies.

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

SECTION 1.  Section 31.002(a)(55-a), Finance Code, is amended to read as follows:

(55-a) "Third-party service provider" means a person who performs activities relating to the business of banking on behalf of a depository institution for the depository institution's customers or on behalf of another person directly engaged in providing financial services for the person's customers. The term:

(A)  includes a person who:

(i)  provides data processing services;

(ii)  performs activities in support of the provision of financial services, including lending, transferring funds, fiduciary activities, trading activities, and deposit taking activities; [~~or~~]

(iii)  engages wholly or partly in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, including depository institutions; or

(iv) provides Internet-related services, including web services, processing electronic bill payments, developing and maintaining mobile applications, system and software development and maintenance, and security monitoring; and

(B)  does not include a provider of an interactive computer service or a general audience Internet or communications platform, except to the extent that the service or platform is specially designed or adapted for the business of banking and activities relating to the business of banking.

SECTION 2.  Section 31.105, Finance Code, is amended by adding Subsections (f) and (g) to read as follows:

(f)  Except to the extent disclosure is necessary to locate and produce responsive records or obtain legal representation and subject to Subsection (g), a subpoena issued under this section may provide that the person to whom the subpoena is directed or any person who comes into receipt of the subpoena may not:

(1)  disclose that the subpoena has been issued;

(2)  disclose or describe any records requested in the subpoena;

(3)  disclose whether records have been furnished in response to the subpoena; or

(4)  if the subpoena requires a person to be examined under oath, disclose or describe the examination, including the questions asked, the testimony given, or the transcript produced.

(g)  A subpoena issued under this section may prohibit the disclosure of information described by Subsection (f) only if the banking commissioner finds, and the subpoena states, that:

(1)  the subpoena, the examination, or the records relate to an ongoing investigation; and

(2)  the disclosure could significantly impede or jeopardize the investigation.

SECTION 3.  Section 31.107, Finance Code, is amended by adding Subsection (e) to read as follows:

(e)  A third-party service provider that refuses to submit to examination or to pay an assessed fee for examination under this section is subject to an enforcement action under Chapter 35. With respect to a third-party service provider's refusal to submit to examination, the banking commissioner may notify all state banks of the refusal and warn that continued use of the third-party service provider may constitute an unsafe and unsound banking practice.

SECTION 4.  Section 33.005, Finance Code, is amended to read as follows:

Sec. 33.005.  EXEMPTIONS. The following acquisitions are exempt from Section 33.001:

(1)  an acquisition of securities in connection with the exercise of a security interest or otherwise in full or partial satisfaction of a debt previously contracted for in good faith and the acquiring person files written notice of acquisition with the banking commissioner before the person votes the securities acquired;

(2)  an acquisition of voting securities in any class or series by a controlling person who has previously complied with and received approval under this subchapter or who was identified as a controlling person in a prior application filed with and approved by the banking commissioner;

(3)  an acquisition or transfer by operation of law, will, or intestate succession and the acquiring person files written notice of acquisition with the banking commissioner before the person votes the securities acquired;

(4)  a transaction subject to Chapter 202 if:

(A)  the acquiring bank holding company currently owns and controls a state bank; or

(B)  the post-transaction controlling person:

(i)  has previously complied with and received approval as a controlling person under this subchapter; or

(ii)  is identified as the controlling person in a merger or other acquisition-related application filed with the banking commissioner concurrently with the submission required by Section 202.001; and

(5)  a transaction exempted by the banking commissioner or by rules adopted under this subtitle because the transaction is not within the purposes of this subchapter or the regulation of the transaction is not necessary or appropriate to achieve the objectives of this subchapter.

SECTION 5.  Section 35.010(c), Finance Code, is amended to read as follows:

(c)  If the banking commissioner determines after the hearing that the alleged conduct occurred and that the conduct constitutes a violation, the banking commissioner may impose an administrative penalty against a bank or other person, as applicable, in an amount:

(1)  if imposed against a bank, [~~not less than $500 and~~] not more than $10,000 for each violation for each day the violation continues, except that the maximum administrative penalty that may be imposed is the lesser of $500,000 or one percent of the bank's assets; or

(2)  if imposed against a person other than a bank, [~~not less than $500 and~~] not more than $5,000 for each violation for each day the violation continues, except that the maximum administrative penalty that may be imposed is $250,000.

SECTION 6.  Section 35.203, Finance Code, is amended by adding Subsections (h) and (i) to read as follows:

(h)  Except to the extent disclosure is necessary to locate and produce responsive records or obtain legal representation and subject to Subsection (i), a subpoena issued under this section may provide that the person to whom the subpoena is directed or any person who comes into receipt of the subpoena may not:

(1)  disclose that the subpoena has been issued;

(2)  disclose or describe any records requested in the subpoena;

(3)  disclose whether records have been furnished in response to the subpoena; or

(4)  if the subpoena requires a person to be examined under oath, disclose or describe the examination, including the questions asked, the testimony given, or the transcript produced.

(i)  A subpoena issued under this section may prohibit the disclosure of information described by Subsection (h) only if the banking commissioner finds, and the subpoena states, that:

(1)  the subpoena, the examination, or the records relate to an ongoing investigation; and

(2)  the disclosure could significantly impede or jeopardize the investigation.

SECTION 7.  Sections 181.002(a)(47-b) and (49), Finance Code, are amended to read as follows:

(47-b)  "Third-party service provider" means a person who performs activities relating to the trust business on behalf of a trust institution for the trust institution's customers or on behalf of another person directly engaged in providing financial services for the person's customers. The term:

(A)  includes a person who:

(i)  provides data processing services;

(ii)  performs activities in support of the provision of financial services, including lending, transferring funds, fiduciary activities, trading activities, and deposit taking activities; [~~or~~]

(iii)  engages wholly or partly in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, including trust institutions; or

(iv)  provides Internet-related services, including web services, processing electronic bill payments, developing and maintaining mobile applications, system and software development and maintenance, and security monitoring; and

(B)  does not include a provider of an interactive computer service or a general audience Internet or communications platform, except to the extent that the service or platform is specially designed or adapted for the trust business and activities relating to the trust business.

(49)  "Trust business" means the business of a company holding itself out to the public as a fiduciary for hire or compensation to hold or administer accounts. The term includes:

(A)  the business of a trustee or custodian of an individual retirement account described by Section 408(a), Internal Revenue Code of 1986; and

(B)  the business of an administrator or servicer of individual retirement accounts described by Section 408(a), Internal Revenue Code of 1986, who [~~possesses or controls any assets, including cash, of those accounts and who~~] makes the administrator's or servicer's services available to the public for hire or compensation.

SECTION 8.  Section 181.104, Finance Code, is amended by adding Subsections (h) and (i) to read as follows:

(h)  Except to the extent disclosure is necessary to locate and produce responsive records or obtain legal representation and subject to Subsection (i), a subpoena issued under this section may provide that the person to whom the subpoena is directed or any person who comes into receipt of the subpoena may not:

(1)  disclose that the subpoena has been issued;

(2)  disclose or describe any records requested in the subpoena;

(3)  disclose whether records have been furnished in response to the subpoena; or

(4)  if the subpoena requires a person to be examined under oath, disclose or describe the examination, including the questions asked, the testimony given, or the transcript produced.

(i)  A subpoena issued under this section may prohibit the disclosure of information described by Subsection (h) only if the banking commissioner finds, and the subpoena states, that:

(1)  the subpoena, the examination, or the records relate to an ongoing investigation; and

(2)  the disclosure could significantly impede or jeopardize the investigation.

SECTION 9.  Section 181.106, Finance Code, is amended by adding Subsection (d) to read as follows:

(d)  A third-party service provider that refuses to submit to examination or to pay an assessed fee for examination under this section is subject to an enforcement action under Chapter 185. With respect to a third-party service provider's refusal to submit to examination, the banking commissioner may notify all state trust companies of the refusal and warn that continued use of the third-party service provider may constitute an unsafe and unsound fiduciary practice.

SECTION 10.  Section 185.010(c), Finance Code, is amended to read as follows:

(c)  If the banking commissioner determines after the hearing that the alleged conduct occurred and that the conduct constitutes a violation, the banking commissioner may impose an administrative penalty against a state trust company or other person, as applicable, in an amount:

(1)  if imposed against a state trust company, [~~not less than $500 and~~] not more than $10,000 for each violation for each day the violation continues, except that the maximum administrative penalty that may be imposed is the lesser of $500,000 or one percent of the state trust company's assets; or

(2)  if imposed against a person other than a state trust company, [~~not less than $500 and~~] not more than $5,000 for each violation for each day the violation continues, except that the maximum administrative penalty that may be imposed is $250,000.

SECTION 11.  Section 185.202, Finance Code, is amended by adding Subsections (h) and (i) to read as follows:

(h)  Except to the extent disclosure is necessary to locate and produce responsive records or obtain legal representation and subject to Subsection (i), a subpoena issued under this section may provide that the person to whom the subpoena is directed or any person who comes into receipt of the subpoena may not:

(1)  disclose that the subpoena has been issued;

(2)  disclose or describe any records requested in the subpoena;

(3)  disclose whether records have been furnished in response to the subpoena; or

(4)  if the subpoena requires a person to be examined under oath, disclose or describe the examination, including the questions asked, the testimony given, or the transcript produced.

(i)  A subpoena issued under this section may prohibit the disclosure of information described by Subsection (h) only if the banking commissioner finds, and the subpoena states, that:

(1)  the subpoena, the examination, or the records relate to an ongoing investigation; and

(2)  the disclosure could significantly impede or jeopardize the investigation.

SECTION 12.  This Act takes effect September 1, 2019.

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