

By: Murphy

H.B. No. 2173

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the regulation of state banks, state trust companies,  
3 and third-party service providers of state banks and state trust  
4 companies.

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

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

8 (55-a) "Third-party service provider" means a person  
9 who performs activities relating to the business of banking on  
10 behalf of a depository institution for the depository institution's  
11 customers or on behalf of another person directly engaged in  
12 providing financial services for the person's customers. The term:

13 (A) includes a person who:

14 (i) provides data processing services;

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

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

24 (iv) provides Internet-related services,

1 including web services, processing electronic bill payments,  
2 developing and maintaining mobile applications, system and  
3 software development and maintenance, and security monitoring; and

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

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

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

16 (1) disclose that the subpoena has been issued;

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

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

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

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

27 (1) the subpoena, the examination, or the records

1 relate to an ongoing investigation; and

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

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

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

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

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

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

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

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

5           (4) a transaction subject to Chapter 202 if:

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

8                   (B) the post-transaction controlling person:

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

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

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

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

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

27                   (1) if imposed against a bank, [~~not less than \$500 and~~]

1 not more than \$10,000 for each violation for each day the violation  
2 continues, except that the maximum administrative penalty that may  
3 be imposed is the lesser of \$500,000 or one percent of the bank's  
4 assets; or

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

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

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

16 (1) disclose that the subpoena has been issued;

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

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

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

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

27 (1) the subpoena, the examination, or the records

1 relate to an ongoing investigation; and

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

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

6 (47-b) "Third-party service provider" means a person  
7 who performs activities relating to the trust business on behalf of  
8 a trust institution for the trust institution's customers or on  
9 behalf of another person directly engaged in providing financial  
10 services for the person's customers. The term:

11 (A) includes a person who:

12 (i) provides data processing services;

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

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

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

25 (B) does not include a provider of an interactive  
26 computer service or a general audience Internet or communications  
27 platform, except to the extent that the service or platform is

1 specially designed or adapted for the trust business and activities  
2 relating to the trust business.

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

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

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

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

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

22 (1) disclose that the subpoena has been issued;

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

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

27 (4) if the subpoena requires a person to be examined

1 under oath, disclose or describe the examination, including the  
2 questions asked, the testimony given, or the transcript produced.

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

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

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

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

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

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

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

27 (1) if imposed against a state trust company, [~~not~~



1 ~~less than \$500 and~~] not more than \$10,000 for each violation for  
2 each day the violation continues, except that the maximum  
3 administrative penalty that may be imposed is the lesser of  
4 \$500,000 or one percent of the state trust company's assets; or

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

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

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

16 (1) disclose that the subpoena has been issued;

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

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

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

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

27 (1) the subpoena, the examination, or the records

1 relate to an ongoing investigation; and

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

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