

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) for the purpose of furnishing to third parties reports indicating a person's creditworthiness, credit standing, or credit capacity, regularly engages in the practice of assembling or evaluating, and maintaining, public record information and credit account information from persons who furnish that information regularly and in the ordinary course of

1 business; or

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

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

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

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

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

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

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

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

26 (g) A subpoena issued under this section may prohibit the  
27 disclosure of information described by Subsection (f) only if the

1 banking commissioner finds, and the subpoena states, that:

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

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

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

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

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

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

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

25 (2) an acquisition of voting securities in any class  
26 or series by a controlling person who has previously complied with  
27 and received approval under this subchapter or who was identified

1 as a controlling person in a prior application filed with and  
2 approved by the banking commissioner;

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

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

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

10 (B) the post-transaction controlling person:

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

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

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

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

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

1 applicable, in an amount:

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

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

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

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

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

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

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

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

26 (i) A subpoena issued under this section may prohibit the  
27 disclosure of information described by Subsection (h) only if the

1 banking commissioner finds, and the subpoena states, that:

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

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

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

8 (47-b) "Third-party service provider" means a person  
9 who performs activities relating to the trust business on behalf of  
10 a trust institution for the trust institution's customers or on  
11 behalf of another person directly engaged in providing financial  
12 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) for the purpose of furnishing to  
20 third parties reports indicating a person's creditworthiness,  
21 credit standing, or credit capacity, regularly engages in the  
22 practice of assembling or evaluating, and maintaining, public  
23 record information and credit account information from persons who  
24 furnish that information regularly and in the ordinary course of  
25 business; or

26 (iv) provides Internet-related services,  
27 including web services, processing electronic bill payments,

1 developing and maintaining mobile applications, system and  
2 software development and maintenance, and security monitoring; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27           (c) If the banking commissioner determines after the



1 hearing that the alleged conduct occurred and that the conduct  
2 constitutes a violation, the banking commissioner may impose an  
3 administrative penalty against a state trust company or other  
4 person, as applicable, in an amount:

5 (1) if imposed against a state trust company, [~~not~~  
6 ~~less than \$500 and~~] not more than \$10,000 for each violation for  
7 each day the violation continues, except that the maximum  
8 administrative penalty that may be imposed is the lesser of  
9 \$500,000 or one percent of the state trust company's assets; or

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

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

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

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

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

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

26 (4) if the subpoena requires a person to be examined  
27 under oath, disclose or describe the examination, including the

1 questions asked, the testimony given, or the transcript produced.

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

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

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

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

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1823 passed the Senate on April 11, 2019, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 23, 2019, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1823 passed the House, with amendment, on May 16, 2019, by the following vote: Yeas 139, Nays 1, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor