

By: Campbell
(Murphy)

S.B. No. 1823

Substitute the following for S.B. No. 1823:

By: Gutierrez

C.S.S.B. No. 1823

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) 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

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.