

1-1 By: Campbell S.B. No. 1823  
 1-2 (In the Senate - Filed March 7, 2019; March 18, 2019, read  
 1-3 first time and referred to Committee on Business & Commerce;  
 1-4 April 1, 2019, reported favorably by the following vote: Yeas 7,  
 1-5 Nays 0; April 1, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Hancock	X			
1-8 Nichols	X			
1-9 Campbell	X			
1-10 Creighton	X			
1-11 Menéndez			X	
1-12 Paxton	X			
1-13 Schwertner	X			
1-14 Whitmire	X			
1-15 Zaffirini			X	

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to the regulation of state banks, state trust companies,  
 1-20 and third-party service providers of state banks and state trust  
 1-21 companies.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Section 31.002(a)(55-a), Finance Code, is  
 1-24 amended to read as follows:

1-25 (55-a) "Third-party service provider" means a person  
 1-26 who performs activities relating to the business of banking on  
 1-27 behalf of a depository institution for the depository institution's  
 1-28 customers or on behalf of another person directly engaged in  
 1-29 providing financial services for the person's customers. The term:

1-30 (A) includes a person who:

1-31 (i) provides data processing services;

1-32 (ii) performs activities in support of the  
 1-33 provision of financial services, including lending, transferring  
 1-34 funds, fiduciary activities, trading activities, and deposit  
 1-35 taking activities; ~~or~~

1-36 (iii) engages wholly or partly in the  
 1-37 practice of assembling or evaluating consumer credit information or  
 1-38 other information on consumers for the purpose of furnishing  
 1-39 consumer reports to third parties, including depository  
 1-40 institutions; or

1-41 (iv) provides Internet-related services,  
 1-42 including web services, processing electronic bill payments,  
 1-43 developing and maintaining mobile applications, system and  
 1-44 software development and maintenance, and security monitoring; and

1-45 (B) does not include a provider of an interactive  
 1-46 computer service or a general audience Internet or communications  
 1-47 platform, except to the extent that the service or platform is  
 1-48 specially designed or adapted for the business of banking and  
 1-49 activities relating to the business of banking.

1-50 SECTION 2. Section 31.105, Finance Code, is amended by  
 1-51 adding Subsections (f) and (g) to read as follows:

1-52 (f) Except to the extent disclosure is necessary to locate  
 1-53 and produce responsive records or obtain legal representation and  
 1-54 subject to Subsection (g), a subpoena issued under this section may  
 1-55 provide that the person to whom the subpoena is directed or any  
 1-56 person who comes into receipt of the subpoena may not:

1-57 (1) disclose that the subpoena has been issued;

1-58 (2) disclose or describe any records requested in the  
 1-59 subpoena;

1-60 (3) disclose whether records have been furnished in  
 1-61 response to the subpoena; or

2-1 (4) if the subpoena requires a person to be examined  
2-2 under oath, disclose or describe the examination, including the  
2-3 questions asked, the testimony given, or the transcript produced.

2-4 (g) A subpoena issued under this section may prohibit the  
2-5 disclosure of information described by Subsection (f) only if the  
2-6 banking commissioner finds, and the subpoena states, that:

2-7 (1) the subpoena, the examination, or the records  
2-8 relate to an ongoing investigation; and

2-9 (2) the disclosure could significantly impede or  
2-10 jeopardize the investigation.

2-11 SECTION 3. Section 31.107, Finance Code, is amended by  
2-12 adding Subsection (e) to read as follows:

2-13 (e) A third-party service provider that refuses to submit to  
2-14 examination or to pay an assessed fee for examination under this  
2-15 section is subject to an enforcement action under Chapter 35. With  
2-16 respect to a third-party service provider's refusal to submit to  
2-17 examination, the banking commissioner may notify all state banks of  
2-18 the refusal and warn that continued use of the third-party service  
2-19 provider may constitute an unsafe and unsound banking practice.

2-20 SECTION 4. Section 33.005, Finance Code, is amended to read  
2-21 as follows:

2-22 Sec. 33.005. EXEMPTIONS. The following acquisitions are  
2-23 exempt from Section 33.001:

2-24 (1) an acquisition of securities in connection with  
2-25 the exercise of a security interest or otherwise in full or partial  
2-26 satisfaction of a debt previously contracted for in good faith and  
2-27 the acquiring person files written notice of acquisition with the  
2-28 banking commissioner before the person votes the securities  
2-29 acquired;

2-30 (2) an acquisition of voting securities in any class  
2-31 or series by a controlling person who has previously complied with  
2-32 and received approval under this subchapter or who was identified  
2-33 as a controlling person in a prior application filed with and  
2-34 approved by the banking commissioner;

2-35 (3) an acquisition or transfer by operation of law,  
2-36 will, or intestate succession and the acquiring person files  
2-37 written notice of acquisition with the banking commissioner before  
2-38 the person votes the securities acquired;

2-39 (4) a transaction subject to Chapter 202 if:

2-40 (A) the acquiring bank holding company currently  
2-41 owns and controls a state bank; or

2-42 (B) the post-transaction controlling person:  
2-43 (i) has previously complied with and  
2-44 received approval as a controlling person under this subchapter; or  
2-45 (ii) is identified as the controlling  
2-46 person in a merger or other acquisition-related application filed  
2-47 with the banking commissioner concurrently with the submission  
2-48 required by Section 202.001; and

2-49 (5) a transaction exempted by the banking commissioner  
2-50 or by rules adopted under this subtitle because the transaction is  
2-51 not within the purposes of this subchapter or the regulation of the  
2-52 transaction is not necessary or appropriate to achieve the  
2-53 objectives of this subchapter.

2-54 SECTION 5. Section 35.010(c), Finance Code, is amended to  
2-55 read as follows:

2-56 (c) If the banking commissioner determines after the  
2-57 hearing that the alleged conduct occurred and that the conduct  
2-58 constitutes a violation, the banking commissioner may impose an  
2-59 administrative penalty against a bank or other person, as  
2-60 applicable, in an amount:

2-61 (1) if imposed against a bank, ~~not less than \$500 and~~  
2-62 not more than \$10,000 for each violation for each day the violation  
2-63 continues, except that the maximum administrative penalty that may  
2-64 be imposed is the lesser of \$500,000 or one percent of the bank's  
2-65 assets; or

2-66 (2) if imposed against a person other than a bank, ~~not~~  
2-67 ~~less than \$500 and~~ not more than \$5,000 for each violation for each  
2-68 day the violation continues, except that the maximum administrative  
2-69 penalty that may be imposed is \$250,000.

3-1 SECTION 6. Section 35.203, Finance Code, is amended by  
3-2 adding Subsections (h) and (i) to read as follows:

3-3 (h) Except to the extent disclosure is necessary to locate  
3-4 and produce responsive records or obtain legal representation and  
3-5 subject to Subsection (i), a subpoena issued under this section may  
3-6 provide that the person to whom the subpoena is directed or any  
3-7 person who comes into receipt of the subpoena may not:

3-8 (1) disclose that the subpoena has been issued;

3-9 (2) disclose or describe any records requested in the  
3-10 subpoena;

3-11 (3) disclose whether records have been furnished in  
3-12 response to the subpoena; or

3-13 (4) if the subpoena requires a person to be examined  
3-14 under oath, disclose or describe the examination, including the  
3-15 questions asked, the testimony given, or the transcript produced.

3-16 (i) A subpoena issued under this section may prohibit the  
3-17 disclosure of information described by Subsection (h) only if the  
3-18 banking commissioner finds, and the subpoena states, that:

3-19 (1) the subpoena, the examination, or the records  
3-20 relate to an ongoing investigation; and

3-21 (2) the disclosure could significantly impede or  
3-22 jeopardize the investigation.

3-23 SECTION 7. Sections 181.002(a)(47-b) and (49), Finance  
3-24 Code, are amended to read as follows:

3-25 (47-b) "Third-party service provider" means a person  
3-26 who performs activities relating to the trust business on behalf of  
3-27 a trust institution for the trust institution's customers or on  
3-28 behalf of another person directly engaged in providing financial  
3-29 services for the person's customers. The term:

3-30 (A) includes a person who:

3-31 (i) provides data processing services;

3-32 (ii) performs activities in support of the  
3-33 provision of financial services, including lending, transferring  
3-34 funds, fiduciary activities, trading activities, and deposit  
3-35 taking activities; ~~or~~

3-36 (iii) engages wholly or partly in the  
3-37 practice of assembling or evaluating consumer credit information or  
3-38 other information on consumers for the purpose of furnishing  
3-39 consumer reports to third parties, including trust institutions; or

3-40 (iv) provides Internet-related services,  
3-41 including web services, processing electronic bill payments,  
3-42 developing and maintaining mobile applications, system and  
3-43 software development and maintenance, and security monitoring; and

3-44 (B) does not include a provider of an interactive  
3-45 computer service or a general audience Internet or communications  
3-46 platform, except to the extent that the service or platform is  
3-47 specially designed or adapted for the trust business and activities  
3-48 relating to the trust business.

3-49 (49) "Trust business" means the business of a company  
3-50 holding itself out to the public as a fiduciary for hire or  
3-51 compensation to hold or administer accounts. The term includes:

3-52 (A) the business of a trustee or custodian of an  
3-53 individual retirement account described by Section 408(a),  
3-54 Internal Revenue Code of 1986; and

3-55 (B) the business of an administrator or servicer  
3-56 of individual retirement accounts described by Section 408(a),  
3-57 Internal Revenue Code of 1986, who ~~possesses or controls any~~  
3-58 ~~assets, including cash, of those accounts and who~~ makes the  
3-59 administrator's or servicer's services available to the public for  
3-60 hire or compensation.

3-61 SECTION 8. Section 181.104, Finance Code, is amended by  
3-62 adding Subsections (h) and (i) to read as follows:

3-63 (h) Except to the extent disclosure is necessary to locate  
3-64 and produce responsive records or obtain legal representation and  
3-65 subject to Subsection (i), a subpoena issued under this section may  
3-66 provide that the person to whom the subpoena is directed or any  
3-67 person who comes into receipt of the subpoena may not:

3-68 (1) disclose that the subpoena has been issued;

3-69 (2) disclose or describe any records requested in the

4-1 subpoena;  
4-2 (3) disclose whether records have been furnished in  
4-3 response to the subpoena; or

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

4-7 (i) A subpoena issued under this section may prohibit the  
4-8 disclosure of information described by Subsection (h) only if the  
4-9 banking commissioner finds, and the subpoena states, that:

4-10 (1) the subpoena, the examination, or the records  
4-11 relate to an ongoing investigation; and

4-12 (2) the disclosure could significantly impede or  
4-13 jeopardize the investigation.

4-14 SECTION 9. Section 181.106, Finance Code, is amended by  
4-15 adding Subsection (d) to read as follows:

4-16 (d) A third-party service provider that refuses to submit to  
4-17 examination or to pay an assessed fee for examination under this  
4-18 section is subject to an enforcement action under Chapter 185. With  
4-19 respect to a third-party service provider's refusal to submit to  
4-20 examination, the banking commissioner may notify all state trust  
4-21 companies of the refusal and warn that continued use of the  
4-22 third-party service provider may constitute an unsafe and unsound  
4-23 fiduciary practice.

4-24 SECTION 10. Section 185.010(c), Finance Code, is amended to  
4-25 read as follows:

4-26 (c) If the banking commissioner determines after the  
4-27 hearing that the alleged conduct occurred and that the conduct  
4-28 constitutes a violation, the banking commissioner may impose an  
4-29 administrative penalty against a state trust company or other  
4-30 person, as applicable, in an amount:

4-31 (1) if imposed against a state trust company, [~~not~~  
4-32 ~~less than \$500 and~~] not more than \$10,000 for each violation for  
4-33 each day the violation continues, except that the maximum  
4-34 administrative penalty that may be imposed is the lesser of  
4-35 \$500,000 or one percent of the state trust company's assets; or

4-36 (2) if imposed against a person other than a state  
4-37 trust company, [~~not less than \$500 and~~] not more than \$5,000 for  
4-38 each violation for each day the violation continues, except that  
4-39 the maximum administrative penalty that may be imposed is \$250,000.

4-40 SECTION 11. Section 185.202, Finance Code, is amended by  
4-41 adding Subsections (h) and (i) to read as follows:

4-42 (h) Except to the extent disclosure is necessary to locate  
4-43 and produce responsive records or obtain legal representation and  
4-44 subject to Subsection (i), a subpoena issued under this section may  
4-45 provide that the person to whom the subpoena is directed or any  
4-46 person who comes into receipt of the subpoena may not:

4-47 (1) disclose that the subpoena has been issued;

4-48 (2) disclose or describe any records requested in the  
4-49 subpoena;

4-50 (3) disclose whether records have been furnished in  
4-51 response to the subpoena; or

4-52 (4) if the subpoena requires a person to be examined  
4-53 under oath, disclose or describe the examination, including the  
4-54 questions asked, the testimony given, or the transcript produced.

4-55 (i) A subpoena issued under this section may prohibit the  
4-56 disclosure of information described by Subsection (h) only if the  
4-57 banking commissioner finds, and the subpoena states, that:

4-58 (1) the subpoena, the examination, or the records  
4-59 relate to an ongoing investigation; and

4-60 (2) the disclosure could significantly impede or  
4-61 jeopardize the investigation.

4-62 SECTION 12. This Act takes effect September 1, 2019.

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