87R11032 SRA-F

By:  West S.B. No. 1714

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Community Reinvestment Act; authorizing a fee.

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

SECTION 1.  Subtitle Z, Title 3, Finance Code, is amended by adding Chapter 282 to read as follows:

CHAPTER 282. TEXAS COMMUNITY REINVESTMENT ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 282.001.  SHORT TITLE. This chapter may be cited as the Texas Community Reinvestment Act.

Sec. 282.002.  DEFINITIONS. In this chapter:

(1)  "Banking commissioner" means the banking commissioner of Texas.

(2)  "Covered financial institution" means:

(A)  a bank, savings bank, or credit union chartered under the laws of this state;

(B)  an entity licensed in this state to make or originate residential mortgage loans that lent or originated 50 or more residential mortgage loans in the previous calendar year; and

(C)  any other financial institution under the jurisdiction of the department as designated by rule by the banking commissioner.

(3)  "Department" means the Texas Department of Banking.

Sec. 282.003.  APPLICABILITY OF CHAPTER. This chapter does not apply to a bank, savings bank, savings and loan association, or credit union chartered under the laws of the United States.

Sec. 282.004.  CONFLICT WITH OTHER LAW. To the extent this chapter conflicts with other law, this chapter prevails.

Sec. 282.005.  RULES. (a) The banking commissioner may adopt rules necessary and appropriate to implement and enforce this chapter, including rules that:

(1)  promote access for all communities in this state to appropriate financial services from covered financial institutions;

(2)  define fair lending practices in connection with the activities of covered financial institutions;

(3)  define the terms used in this chapter and interpret the provisions of this chapter; and

(4)  create a public comments process.

(b)  To implement this chapter, the banking commissioner shall adopt rules incorporating the regulations applicable to covered financial institutions under federal law. The banking commissioner may make adjustments and exceptions to the rules as necessary.

SUBCHAPTER B. ASSESSMENT OF COVERED FINANCIAL INSTITUTIONS' SERVICE TO LOCAL COMMUNITIES

Sec. 282.051.  OBLIGATIONS OF COVERED FINANCIAL INSTITUTIONS. (a) Each covered financial institution has a continuing and affirmative obligation to meet the financial services needs of the communities in which the institution's offices, branches, and other facilities are maintained that is:

(1)  consistent with the safe and sound operation of the financial institution; and

(2)  for a credit union, consistent with the credit union's common bond.

(b)  Each covered financial institution that provides all or a majority of the institution's products and services through mobile and other digital channels has a continuing and affirmative obligation to help meet the financial services needs of deposit-based assessment areas, including areas contiguous to those areas, low-income and moderate-income neighborhoods, and areas where there is a lack of access to safe and affordable banking and lending services, that is:

(1)  consistent with the safe and sound operation of the financial institution; and

(2)  for a credit union, consistent with a credit union's common bond.

Sec. 282.052.  ASSESSMENT OF COVERED FINANCIAL INSTITUTIONS. (a) The banking commissioner shall assess the record of each covered financial institution in satisfying the financial institution's obligations under Section 282.051.

(b)  The banking commissioner by rule shall provide for an assessment of the following factors relating to whether covered financial institutions are meeting the financial services needs of local communities:

(1)  activities to ascertain the financial services needs of the community, including communication with community members regarding financial services provided;

(2)  extent of marketing activities to make members of the community aware of the financial services offered;

(3)  origination of mortgage loans, including home improvement and rehabilitation loans, and other efforts to assist existing low-income and moderate-income residents to be able to remain in affordable housing in the their neighborhoods;

(4)  for small business lenders, the origination of loans to businesses with gross annual revenues of $1,000,000 or less, particularly those in low-income and moderate-income neighborhoods;

(5)  participation, including investments, in community development and redevelopment programs, small business technical assistance programs, minority-owned depository institutions, community development financial institutions, and mutually-owned financial institutions;

(6)  efforts working with delinquent customers to facilitate a resolution of the delinquency;

(7)  origination of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units;

(8)  evidence of discriminatory and prohibited practices; and

(9)  other factors that reasonably bear on the extent to which a covered financial institution is meeting the financial services needs of the institution's entire community, including responsiveness to community needs as reflected by public comments.

Sec. 282.053.  EXAMINATIONS; FEES. (a) The banking commissioner, in consultation with state and federal agencies with appropriate regulatory authority, may examine each covered financial institution for compliance with this chapter and other applicable state and federal fair lending laws, including:

(1)  the Texas Fair Housing Act (Chapter 301, Property Code);

(2)  the Equal Credit Opportunity Act (15 U.S.C. Section 1691 et seq.); and

(3)  the Home Mortgage Disclosure Act of 1975 (12 U.S.C. Section 2801 et seq.).

(b)  The banking commissioner may adopt rules with respect to the frequency and manner of examination, including the imposition of examination fees.

(c)  The banking commissioner shall appoint a suitable person to perform the examination. The banking commissioner or the commissioner's appointees may:

(1)  examine the books, records, documents, and operations of each covered financial institution or the institution's parent company, subsidiaries, affiliates, or agents; and

(2)  examine under oath any officers, directors, employees, and agents of the covered financial institution or the institution's parent company, subsidiaries, affiliates, or agents.

(d)  Any document or record prepared or obtained in connection with or relating to the examination, and any record prepared or obtained by the banking commissioner, to the extent that the record summarizes or contains information derived from any document or record described by this section, is not public information subject to disclosure under Chapter 552, Government Code, unless otherwise provided by this chapter.

Sec. 282.054.  WRITTEN EVALUATION. (a) On completion of an examination of a covered financial institution under Section 282.053, the banking commissioner shall prepare a written evaluation of the covered financial institution's record of performance under this chapter.

(b)  Each evaluation must have:

(1)  a public section that includes, at a minimum, the information that would be disclosed in a written evaluation under the Community Reinvestment Act of 1977 (12 U.S.C. Section 2901 et seq.); and

(2)  a confidential section.

(c)  After the banking commissioner gives the covered financial institution an opportunity to comment on the evaluation, the banking commissioner shall make the public section of the evaluation open to public inspection on request.

(d)  The written evaluation must include:

(1)  the assessment factors used to determine the covered financial institution's descriptive rating;

(2)  the banking commissioner's conclusions with respect to each assessment factor;

(3)  a discussion of the facts supporting those conclusions;

(4)  the covered financial institution's descriptive rating and the basis for the rating; and

(5)  a summary of public comments.

Sec. 282.055.  RATINGS FOR RECORD OF PERFORMANCE. (a) Based on an examination under Section 282.053, the banking commissioner shall assign a covered financial institution one of the following ratings in regard to the institution's record of performance in meeting the institution's community financial service needs:

(1)  outstanding;

(2)  satisfactory;

(3)  needs to improve; or

(4)  substantial noncompliance.

(b)  Notwithstanding the provisions of this chapter, the banking commissioner may establish an alternative examination procedure for any covered financial institution that, as of its most recent examination, has been assigned a rating of outstanding or satisfactory for the institution's record of performance in meeting the institution's community financial services needs.

Sec. 282.056.  PUBLIC NOTICE. Each covered financial institution shall provide, in the public lobby in each of the institution's offices and on the institution's Internet website, a public notice that is substantially similar to the following:

"STATE OF TEXAS

COMMUNITY REINVESTMENT NOTICE

The Texas Department of Banking (department) evaluates our performance in meeting the financial services needs of this community, including the needs of low-income to moderate-income households. The department takes this evaluation into account when deciding on certain applications submitted by us for approval by the department. Your involvement is encouraged. You may obtain a copy of our evaluation. You may also submit signed, written comments about our performance in meeting community financial services needs to the department."

Sec. 282.058.  CORPORATE ACTIVITIES AND RENEWAL APPLICATIONS. (a) The banking commissioner shall consider the record of performance of the covered financial institution and the institution's parent company, including subsidiaries, relative to this chapter in considering an application for:

(1)  the establishment of a branch office or other facility;

(2)  the relocation of a main office, branch office, or other facility;

(3)  a license renewal;

(4)  a change in control of a covered financial institution; or

(5)  a merger or consolidation with, the acquisition of assets of, or the assumption of liabilities of:

(A)  a covered financial institution;

(B)  an out-of-state bank, credit union, or residential mortgage licensee;

(C)  a national bank or credit union; or

(D)  a foreign financial institution.

(b)  The record of performance of the covered financial institution may be the basis for the denial of an application described by Subsection (a).

SUBCHAPTER C. COOPERATIVE AGREEMENTS

Sec. 282.101.  COOPERATIVE AGREEMENTS. (a) For purposes of this chapter, the banking commissioner may:

(1)  conduct any examinations under this chapter with state, other state, or federal regulators;

(2)  enter into cooperative agreements regarding:

(A)  the coordination of or joint participation in the examinations;

(B)  the amount and assessment of examination fees; or

(C)  enforcement actions related to the examinations; and

(3)  accept reports of examinations by other regulators under those agreements.

(b)  Any coordination or joint participation under this section:

(1)  may seek to promote efficient regulation and effect cost reductions for the department and covered financial institutions; and

(2)  may not limit public participation as permitted under certain federal regulations.

Sec. 282.102.  CONFIDENTIALITY; PRIVILEGES. Any information or material shared for purposes of coordination or joint participation under this subchapter continues to be subject to the requirements under any federal or state law regarding the privacy or confidentiality of the information or material. Any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continues to apply to the information or material.

Sec. 282.103.  AUTHORITY NOT LIMITED. This subchapter may not be construed as limiting the authority of the banking commissioner to independently conduct examinations of and enforcement actions against a covered financial institution.

SECTION 2.  Subchapter C, Chapter 404, Government Code, is amended by adding Section 404.0213 to read as follows:

Sec. 404.0213.  CONSIDERATION OF FINANCIAL INSTITUTION'S COMMITMENT TO COMMUNITY. (a) In addition to any other requirements under law, the comptroller shall consider a financial institution's record and current level of financial commitment to the institution's local community when deciding whether to deposit state funds in the financial institution. The comptroller may consider:

(1)  for financial institutions subject to the Community Reinvestment Act of 1977 (12 U.S.C. Section 2901 et seq.), the current and historical ratings that the financial institution has received, to the extent that those ratings are publicly available, under that law;

(2)  any changes in ownership, management, policies, or practices of the financial institution that may affect the level of the financial institution's commitment to the institution's community;

(3)  the financial impact that the withdrawal or denial of deposits of state funds might have on the financial institution; and

(4)  the financial impact to the state as a result of withdrawing state funds or refusing to deposit additional state funds in the financial institution.

(b)  State funds may not be deposited in a financial institution subject to the Community Reinvestment Act of 1977 (12 U.S.C. Section 2901 et seq.) unless the institution has a current rating of satisfactory or outstanding under that law.

(c)  When investing or depositing state funds, the comptroller may give preference to financial institutions that have a current rating of outstanding under the Community Reinvestment Act of 1977 (12 U.S.C. Section 2901 et seq.).

(d)  This section may not be construed as authorizing the comptroller to conduct an examination or investigation of a financial institution or to receive information that is not publicly available and the disclosure of which is otherwise prohibited by law.

SECTION 3.  This Act takes effect September 1, 2021.