

SUBJECT: Revising regulation of state banks, state trust companies, and third parties

COMMITTEE: Pensions, Investments and Financial Services — committee substitute recommended

VOTE: 11 ayes — Murphy, Vo, Capriglione, Flynn, Gervin-Hawkins, Gutierrez, Lambert, Leach, Longoria, Stephenson, Wu

0 nays

SENATE VOTE: On final passage, April 11 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 2173:*

For — Stephen Scurlock, Independent Bankers Association of Texas;
(*Registered, but did not testify:* Tim Morstad, AARP; Celeste Embrey, Texas Bankers Association)

Against — Eric Ellman, Consumer Data Industry Association; Chris Lemens, National Association of Professional Background Screeners

On — Charles Cooper, Texas Department of Banking; (*Registered, but did not testify:* Everette Jobe, Texas Department of Banking)

BACKGROUND: Finance Code sec. 31.105 requires the banking commissioner to examine each state bank annually or as often as considered necessary to safeguard the interests of depositors, creditors, and shareholders and efficiently enforce law. The commissioner may subpoena witnesses and compel the production of documents. Under sec. 31.107, the commissioner may examine a third-party service provider contracting with a bank or affiliate to the same extent as a state bank. The commissioner may collect a fee from an examined third-party provider to cover the cost of the examination.

Sec. 181.104 requires the banking commissioner to examine each state trust company annually or as considered necessary. The commissioner may subpoena witnesses and require and compel the production of

documents. Under sec. 181.106, the commissioner may examine, to the same extent as a state trust company, a third-party service provider contracting with a state trust company or affiliate. The commissioner may collect a fee from an examined third-party provider to cover the cost of the examination.

Secs. 35.203 and 185.202 allow the banking commissioner to issue a subpoena to compel the attendance and testimony of a witness or the production of certain documents relating to an investigation of unauthorized activity or unauthorized trust activity, respectively.

DIGEST:

CSSB 1823 would expand the definition of "third-party service provider" to include a person who regularly engaged in the practice of assembling, evaluating, or maintaining public record and credit account information for the purpose of furnishing to third parties reports indicating a person's creditworthiness, credit standing, or credit capacity.

A third-party service provider that refused to submit to examination or pay an examination fee to the banking commissioner would be subject to an enforcement action. The commissioner could notify all state banks of the refusal and warn that continued use of the service provider could constitute an unsafe and unsound banking or fiduciary practice.

CSSB 1823 would remove the \$500 minimum on administrative penalties imposed on a state bank, state trust company, or other person by the banking commissioner for certain violations.

Except to the extent that disclosure was necessary to locate records or obtain legal representation, a subpoena issued by the banking commissioner regarding an examination of a state bank or trust company or an investigation of unauthorized activity or trust activity could provide that a person was prohibited from disclosing or describing:

- that the subpoena was issued;
- any records requested by the subpoena;
- whether records had been furnished in response to the subpoena; or

- an examination under oath, including the questions asked, testimony given, or transcript produced.

A subpoena issued by the banking commissioner could prohibit the disclosure of information only if the commissioner found and the subpoena stated that the subpoena, examination, or records related to an ongoing investigation and the disclosure could significantly impede or jeopardize the investigation.

The bill would specify that a transaction subject to statutory regulation regarding a company intending to acquire a Texas bank or bank holding company was exempt from certain acquisition of control laws if:

- the acquiring company owned and controlled a state bank; or
- the post-transaction controlling person had received approval as a controlling person or was identified as the controlling person in a merger or other application filed with the banking commissioner.

The bill would amend the definition of "trust business" to remove criteria that such an entity possess or control any assets, including cash, of individual retirement accounts.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

CSSB 1823 would improve the regulatory and administrative relationships between the Texas Department of Banking and state banks, trusts, and third-party service providers contracting with those entities. The bill also would expand the definition of a third-party service provider to include entities that engaged in consumer credit evaluation on behalf of a state bank or trust. This would mean businesses that handled personal information on a daily basis would fall under the explicit regulatory authority of the Department of Banking, enabling the department to better protect consumer information. This is especially important given a significant data breach by a credit reporting agency in 2017 that exposed the sensitive information of many Texans.

The bill also would strengthen the banking commissioner's bank examination powers by limiting circumstances in which a subpoena or information related to a subpoena could be disclosed. The department also would gain an enforcement mechanism if a third-party provider refused to submit to an examination or pay an examination fee.

Concerns that state regulation of credit reporting agencies would be unnecessary are unfounded. A dual federal-state regulatory exists under the current banking system for both state banks and third-party service providers. The bill would put credit reporting agencies on the same plane as other businesses operating in the finance industry.

**OPPONENTS
SAY:**

CSSB 1823 would expand the definition of a third-party service provider to include credit reporting agencies, which unnecessarily would place consumer credit reporting agencies under Department of Banking regulation. These agencies already are under federal regulation and frequently visited by federal Consumer Financial Protection Bureau examiners, and they do not need to be regulated at the state level.