

## **BILL ANALYSIS**

Senate Research Center

H.B. 1768  
By: Grusendorf (Sibley)  
Business & Commerce  
4/29/2001  
Engrossed

### **DIGEST AND PURPOSE**

The banking industry has changed rapidly over the last decade. Technological advancements and regulatory reform at both the state and national levels may have rendered some aspects of the state's laws regarding financial institutions obsolete. H.B. 1768 provides clarifications in finance law, regulatory authority, and efficient administration by the Finance Commission of Texas and the Texas Department of Banking.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the finance commission in SECTION 1.04 (Section 12.107, Finance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1. CHANGES TO TITLE 2, FINANCE CODE

SECTION 1.01. Amends Section 12.102, Finance Code, as follows:

Sec. 12.102. New heading: DEPUTY BANKING COMMISSIONERS. Requires the banking commissioner to appoint one or more, rather than a, deputy banking commissioners as necessary to the efficient operation of the Texas Department of Banking (department). Requires the banking commissioner to prescribe the qualifications and duties of a deputy banking commissioner. Makes conforming changes.

SECTION 1.02. Amends Section 12.104, Finance Code, to make conforming changes.

SECTION 1.03. Amends Section 12.106(a), Finance Code, to provide that an agent of the banking commissioner is not personally liable for damages arising from the person's official act or omission unless the act or omission is corrupt or malicious.

SECTION 1.04. Amends Section 12.107, Finance Code, to define "Texas trade association."

- (b) Prohibits a person from being a department employee under certain conditions.
- (c) Prohibits a person from acting as the general counsel to the department if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.
- (d) Sets forth certain prohibitions of a department employee.
- (e) Provides that, subject to Subsection (d)(4) and except as otherwise provided by employment policies adopted by the banking commissioner, Subsection (d)(2) does not prohibit certain indebtedness.

(f) Provides that, except as otherwise provided by employment policies adopted by the banking commissioner, Subsection (d)(3) does not prohibit a financial interest of a department employee solely because of certain items.

(g) Authorizes the banking commissioner to adopt employment policies relating to this section, including certain policies.

(h) Authorizes the finance commission to adopt rules to administer this section, including certain rules.

(i) Deletes existing text relating to certain prohibitions of an officer or employee of the department. Requires an employee, before the 11th day after the date on which the employee begins employment with the department, to read rules and policies applicable to employees of the department and sign a notarized affidavit stating that the employee has read those rules and policies.

SECTION 1.05. Repealer: Section 12.110 (Offenses), Finance Code.

## ARTICLE 2. CHANGES TO SUBTITLE A, TITLE 3, FINANCE CODE

SECTION 2.01. Amends Section 31.101, Finance Code, to require the banking commissioner to supervise and regulate, as provided by Subtitle G, state-licensed foreign bank branches and representative offices, administer and enforce Subtitles F and G in person, through a deputy banking commissioner or another officer or employee of the department, or through a supervisor, conservator, or other agent, and administer and enforce laws other than Subtitles F and G.

SECTION 2.02. Amends Section 31.103(a), Government Code, to make a conforming change.

SECTION 2.03. Amends Section 31.105, Finance Code, by amending Subsections (a)-(c) and adding Subsection (f), as follows:

(a) Requires the banking commissioner to examine each state bank not less than once during each 12-month period, except that this examination is required not less than once during each 18-month period under certain conditions.

(b) Authorizes the banking commissioner to examine a state bank more often than required by Subsection (a) as the commissioner considers necessary to efficiently enforce applicable law, rather than this subtitle and Chapter 12.

(c) Makes a conforming change.

(f) Provides that disclosure of information to the banking commissioner pursuant to an examination request does not constitute a waiver of or otherwise affect or diminish an evidentiary privilege to which the information is otherwise subject. Provides that a report of an examination under this section is confidential and is authorized to be disclosed only under the circumstances provided by this subtitle.

SECTION 2.04. Amends Section 31.201(a), Finance Code, to authorize the banking commissioner to convene a hearing to receive evidence and argument regarding any matter within the jurisdiction of and before the banking commissioner for decision or review.

SECTION 2.05. Amends Section 31.301, Finance Code, to set forth conditions for an offense by the banking commissioner or an officer or employee of the department. Provides that an offense under this section is a Class A misdemeanor.

SECTION 2.06. Amends Section 31.305, Finance Code, as follows:

Sec. 31.305. New heading: CIVIL DISCOVERY. Requires civil discovery, rather than discovery, of confidential information from a person subject to Section 31.304, rather than this subchapter, under subpoena or other legal process to comply with rules adopted under this subtitle and other applicable law.

SECTION 2.07. Amends Section 32.004(a), Finance Code, to require the organizers to solicit comments and protests by publishing notice of the application, its date of filing, and the identity of the organizers in the form and frequency specified by the banking commissioner, in a newspaper of general circulation in the county in which the bank is to be located, or in another publication or location as directed by the banking commissioner. Deletes existing text relating to notification of the organizers.

SECTION 2.08. Amends Section 32.204(a), Finance Code, to authorize a state bank to establish one or more loan production officers for the purpose of soliciting loans or equivalent transactions.

SECTION 2.09. Amends Section 33.002(d), Finance Code, to delete existing text relating to prompt publishing after notification of complete and accepted application. Makes conforming changes.

SECTION 2.10. Amends Section 33.103(b), Finance Code, to prohibit a person from serving as director, manager, or managing participant of a state bank, unless the banking commissioner consents otherwise in writing, if the person is the subject of an order described by Section 35.007(a).

SECTION 2.11. Amends Section 33.109, Finance Code, to delete existing text relating to a lease transaction involving real property.

SECTION 2.12. Amends Section 34.102(d), Finance Code, to authorize a state bank to make loans on the collateral security of securities issued by an affidavit, if the loan is subject to and in compliance with the provisions of Sections 23A and 23B, Federal Reserve Act (12 U.S.C. Sections 371c and 371c-1), as amended, applicable to nonmember insured state banks by virtue of Section 18(j)(1), Federal Deposit Insurance Act (12 U.S.C. Section 1828(j)(1)), as amended. Deletes existing text relating to equity securities in a bank holding company.

SECTION 2.13. Amends Section 34.106(a), Finance Code, to authorize a state bank to make investments of a predominantly civic, community, or public nature, including investments providing housing, services, or jobs or promoting the welfare of low-income and moderate income communities or families. Deletes existing text relating to certain investments.

SECTION 2.14. Amends Section 35.007(a), Finance Code, to prohibit a person subject to a final and enforceable removal or prohibition order issued by the banking commissioner, or by another state, federal, or foreign financial institution regulatory agency, except as otherwise provided by law, from taking certain actions without the prior written approval of the banking commissioner.

SECTION 2.15. Amends Section 35.203(c), Finance Code, to make a conforming change.

SECTION 2.16. Amends Section 59.201(a), Finance Code, to remove a condition to this section.

### ARTICLE 3. CHANGES TO SUBTITLE F, TITLE 3, FINANCE CODE

SECTION 3.01. Amends Section 181.102(a), Finance Code, to make conforming changes.

SECTION 3.02. Amends Section 181.104(d), Finance Code, to provide that disclosure of information to the banking commissioner pursuant to an examination request does not constitute a waiver of or otherwise affect or diminish an evidentiary privilege to which the information is otherwise subject. Deletes existing text relating to reporting the result of the examination. Provides that a report

of an examination under this section is confidential and is authorized to be disclosed only under the circumstances provided by this subtitle, rather than subchapter.

SECTION 3.03. Amends Section 181.108(a), Finance Code, to make a conforming change.

SECTION 3.04. Amends Section 181.201(a), Finance Code, to authorize the banking commissioner to convene a hearing to receive evidence and argument regarding any matter within the jurisdiction of and before the banking commissioner for decision or review. Deletes existing text relating to this subtitle.

SECTION 3.05. Amends Section 181.301, Finance Code, to set forth the conditions of an offense by the banking commissioner or an officer or employee of the department. Provides that an offense under this section is a Class A misdemeanor.

SECTION 3.06. Amends Section 181.305, Finance Code, to require civil discovery of confidential information from a person subject to Section 181.304, rather than this subchapter, under subpoena or other legal process in a civil proceeding to comply with rules adopted under this subtitle and other applicable law.

SECTION 3.07. Amends Section 182.004(a), Finance Code, to require the organizers to solicit comments and protests by publishing notice of the application, its filing date, and the identity of the organizers, in the form and frequency specified by the banking commissioner, in certain publications.

SECTION 3.08. Amends Section 183.002(d), Finance Code, to require the notice to be published in the form and frequency specified by the banking commissioner and in a publication or location as directed by the banking commissioner. Deletes existing text relating to notification of the applicant.

SECTION 3.09. Amends Section 183.103(b), Finance Code, to prohibit a person from serving as director, manager, or managing participant of a state trust company if the person is the subject of an order described by Section 185.007(a), unless the banking commissioner consents otherwise in writing.

SECTION 3.10. Amends Section 185.007(a), Finance Code, to prohibit a person subject to a final and enforceable removal or prohibition order issued by the banking commissioner, or by another state, federal, or foreign financial institution regulatory agency, except as otherwise provided by law, from taking certain actions without the prior written approval of the banking commissioner.

SECTION 3.11. Amends Section 185.202(c), Finance Code, to make a conforming change.

SECTION 3.12. Amends Section 186.201(a), Finance Code, to authorize the banking commissioner by written order to close and liquidate a state trust company under certain conditions.

SECTION 3.13. Amends Sections 186.202(a) and (b), Finance Code, to require the banking commissioner, after closing a state trust company under Section 186.201, to attach to or otherwise display at its main entrance a copy of the written closing order issued under Section 186.201(a) and containing the findings on which the closing of the state trust company is based. Requires the banking commissioner, as soon as practicable after posting the closing order at the state trust company's main entrance, to tender the state trust company to the Federal Deposit Insurance Corporation as provided by Section 186.003 or initiate a receivership proceeding by filing a certified copy of the closing order in district court in Travis County, subject to Subsection (c), rather than the county where the state trust company's home office is located. Makes conforming changes.

SECTION 3.14. Amends Section 187.303(a), Finance Code, as added by the Act of the 77th Legislature, Regular Session, 2001, relating to nonsubstantive additions to and corrections in enacted codes, to make conforming changes.

ARTICLE 4. CHANGES TO TEXAS TRUST COMPANY ACT

SECTION 4.01. Amends Section 9.303(a), Texas Trust Company Act (Article 342a-9.303, V.T.C.S.), to make conforming changes.

ARTICLE 5. CHANGES TO SUBTITLE G, TITLE 3, FINANCE CODE

SECTION 5.01. Amends Section 201.006(a), Finance Code, to make conforming changes.

ARTICLE 6. EFFECTIVE DATE; CHANGES FROM 76TH LEGISLATURE

SECTION 6.01. (a) Effective date: September 1, 2001, except as provided by Subsections (b) and (c) of this section.

(b) Makes application of Section 3.14 of this Act contingent upon passage of the Act of the 77th Legislature, Regular Session, 2001, relating to nonsubstantive additions to and corrections in enacted codes.

(c) Makes application of Article 4 of this Act contingent upon passage of the Act of the 77th Legislature, Regular Session, 2001, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 6.02. (a) Provides that the text of Sections 181.102(a), Finance Code, as set out in Section 3.01 of this Act, and 185.007(a), Finance Code, as set out in Section 3.10 of this Act, give effect to changes made by Section 4.003, Chapter 344, Acts of the 76th Legislature, Regular Session, 1999, and by Section 4.013, Chapter 344, Acts of the 76th Legislature, Regular Session, 1999, respectively, in accordance with Section 311.031(c), Government Code, which gives effect to substantive amendments enacted by the same legislature that codifies the amended statutes.

(b) Provides that this Act prevails, to the extent of any conflict, over another Act of the 77th Legislature, Regular Session, 2001, relating to nonsubstantive additions to and corrections in enacted codes.