

## **BILL ANALYSIS**

Senate Research Center

H.B. 2155  
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### **DIGEST AND PURPOSE**

In November 1999, the United States Congress passed the Gramm-Leach-Bliley Act (GLBA), commonly referred to as the Financial Services Modernization Act. GLBA eliminates preexisting federal and state restrictions that prohibited common ownership of entities in insurance, securities, and banking activities. Additionally, GLBA preempts state agent licensing laws that prohibit or interfere with a depository institution's ability to sell insurance. State law in Texas is presently consistent with GLBA to the extent that it does not directly prohibit the types of affiliations contemplated by the Act. GLBA expands activities available to national banks and grants flexibility to federal banking regulators, but preempts certain state laws and prevents certain banks or bank affiliates from selling and underwriting insurance and securities. In an effort to ensure the future viability of the state charters, Texas state agencies with regulatory authority over financial institutions seek to address the inconsistencies between current state law and law enacted by GLBA. H.B. 2155 enhances state bank and trust company charters, authorizes activities beyond those allowed for national banks and their subsidiaries, clarifies and expands state law expressions of authority, and grants flexibility to the banking commissioner to allow state banks and trust companies to compete on a level provided to national banks with federal modernization of financial services.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 2 (Section 31.003, Finance Code), SECTION 6 (Section 32.008, Finance Code), SECTION 8 (Section 32.011, Finance Code), SECTION 18 (Section 181.003, Finance Code), SECTION 22 (Section 182.0105, Finance Code), and SECTION 31 (Section 202.006, Finance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

H.B. 2155 amends the Finance Code to set forth provisions relating to the operation of state banks, state trust companies, and certain financial holding companies in the financial services industry.

#### Disclosure to Other Agencies

The bill prohibits the banking commissioner (commissioner) from disclosing confidential information unless the recipient agency agrees to maintain confidentiality or the commissioner determines that the interest of law enforcement outweighs and justifies the potential of disclosure of the information. The bill authorizes the commissioner to establish an information sharing and exchange program with a functional regulatory agency that has overlapping regulatory jurisdiction with the Texas Department of Banking (department). The bill provides that a disclosure of information by or to the commissioner does not constitute a waiver of or otherwise affect or diminish an evidentiary privilege to which the information is otherwise subject, whether or not the disclosure is governed by a confidentiality agreement. The bill authorizes an agency of this state to execute, honor, and comply with an agreement to maintain confidentiality and oppose disclosure of information obtained from the commissioner and requires an agency of this state to treat as confidential any information obtained from the commissioner that is entitled to confidential treatment (Secs. 31.303 and 181.303).

## Financial Activities of a State Bank

The bill authorizes a state bank to act as an agent, or in a substantially similar capacity, with respect to a financial activity or an activity incidental or complementary to a financial activity and engage in certain nonbanking activities. The bill authorizes a state bank to serve as a community development partner. For purposes of other state law, a banking association is considered a corporation and a limited banking association is considered a limited liability company. The bill authorizes the commissioner to require a state bank to conduct an otherwise authorized activity through a subsidiary (Sec. 32.001). The bill provides that the Texas Business Corporation Act and the Texas Miscellaneous Corporation Laws Act apply to a banking association and that the Texas Limited Liability Company Act applies to a limited banking association (Sec. 32.008).

## State Bank Charter

The bill requires the commissioner to grant a state bank charter only if the commissioner determines that the organizers have established that public convenience and advantage will be promoted by the establishment of the state bank, and sets forth the factors the commissioner is required to consider in determining public convenience and advantage (Sec. 32.003).

## Financial Activities

The bill authorizes the Finance Commission of Texas (commission), by rule, to determine that an activity not otherwise approved or authorized for a state bank, a state trust, and a financial holding company is a financial activity, incidental to financial activity, or complementary to a financial activity. The bill sets forth provisions regarding the information needed to assist the commission in adopting such rules and the factors the commission is required to consider in adopting rules. The bill provides that a rule adopted by the commission does not alter or negate the application of the laws of this state with respect to licensing and regulatory requirements administered by a functional regulatory agency of this state, including, for a state bank or state trust, licensing and regulatory requirements pertaining to insurance activities, securities activities, real estate development, marketing, and sales activities. The bill authorizes a financial holding company to engage in a financial activity or an activity incidental or complementary to a financial activity if the activity has been authorized by the Board of Governors of the Federal Reserve System or a rule adopted by the commission (Secs. 32.010, 32.011, 182.0105 and 202.006).

## Securities

The bill prohibits a state bank from purchasing investment securities for its own account that exceed an amount equal to the lesser of 15 percent of the bank's capital and certified surplus or the bank's total equity capital. The commissioner may authorize investments in excess of the limitation on written application if the commissioner determines that the excess investment is not prohibited by other applicable law and the safety and the soundness of the requesting state bank is not adversely affected. The bill authorizes a state bank to deal in, underwrite, or purchase for its account certain obligations and small business related securities. The bill prohibits a state bank from investing more than an amount equal to the lesser of 25 percent of the bank's capital and certified surplus or the bank's total equity capital in investment grade adjustable rate preferred stock and money market preferred stock (Sec. 34.101).

The bill authorizes a state bank to make any investment through an operating subsidiary that a state bank or a bank holding company, including a financial holding company, is authorized to conduct or make under state or federal law if the operating subsidiary is adequately empowered and appropriately licensed to conduct its business. The bill prohibits a state bank without prior written approval of the commissioner from investing more than an amount equal to 10 percent of the lesser of its capital and certified surplus or the bank's total equity capital in a single subsidiary. The bill also prohibits a state bank from establishing or acquiring a controlling interest in a subsidiary that engages in activities as

principal in which the bank is prohibited from engaging directly unless the state bank's investment in the subsidiary has been approved by the Federal Deposit Insurance Corporation and is in compliance with the regulations and requirements of the Federal Deposit Insurance Act. The bill prohibits a state bank from making a non-controlling minority investment in equity securities of a company except under certain conditions (Sec. 34.103).

#### Engagement in Commerce

The bill provides that a state bank is not considered to be engaging in commerce if engaging in an approved activity, directly or through a subsidiary, that is a financial activity or incidental or complementary to a financial activity, whether as principal or agent (Sec. 34.107).

#### Loans By State Bank

The bill prohibits a state bank, without prior written approval of the commissioner, to make loans or extensions of credit to a person outstanding at one time to exceed an amount equal to 25 percent of the lesser of the bank's capital and certified surplus or the bank's total equity capital (Sec. 34.201).

#### Leases

The bill authorizes a state bank, directly or indirectly through an operating subsidiary, to provide the equivalent of a financing transaction by acting as lessor under a lease for the benefit of a customer. The bill prohibits a state bank from holding personal property more than six months or real property more than two years after the date of expiration of the original or any extended or renewed lease period agreed to by the customer. The bill removes provisions authorizing a state bank to purchase or construct and, as title holder, lease and ultimately transfer a public facility to a public authority, and to become the owner and lessor of tangible personal property on a net lease basis on the request and for the use of the customer (Sec. 34.204).

#### Confidentiality of Administrative Subpoena

The bill sets forth provisions regarding confidentiality of an administrative subpoena that is served on a financial institution (Sec. 59.010).

#### State Trust Company

The bill authorizes a state trust company to engage in the trust business including, with the prior written approval of the commissioner and to the extent consistent with applicable fiduciary principles, engaging in a financial activity or an activity incidental or complementary to a financial activity, directly or through a subsidiary (Sec. 182.001).

#### Commerce

The bill provides that a state trust company engaging in an approved financial activity or an activity incidental or complementary to a financial activity, whether as principal or agent, is not considered to be engaging in commerce (Sec. 184.105).

Effective date: September 1, 2001.