

BILL ANALYSIS

Senate Research Center

S.B. 1401
By: Campbell
Business & Commerce
7/10/2017
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Third-party service providers (TSPs) increasingly conduct vital activities on behalf of banks and trust companies, such as electronic bill payment and mobile payments. However, current statutes are outdated and do not cover many of the services provided.

Additionally, current statute prohibits felons and persons who are subject to prohibition orders from serving as directors of state banks or state trust companies. S.B. 1401 extends the current prohibition to persons seeking to serve as officers. Similarly, holding companies often exert significant power and control over state banks. S.B. 1401 clarifies authority to prohibit persons who would be disqualified from being an officer or director of a state bank or trust company from serving at the holding company level of a state bank.

Furthermore S.B. 1401 allows an order of supervision to be terminated when it is determined that it is no longer a productive enforcement tool. (Original Author's / Sponsor's Statement of Intent)

S.B. 1401 amends current law relating to the regulation of banks and trust companies.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 31.002(a), Finance Code, by adding Subdivision (55-a), to define "third-party service provider."

SECTION 2. Amends Section 31.107, Finance Code, by amending Subsections (a) and (b) and adding Subsection (d), as follows:

(a) Authorizes the banking commissioner (commissioner) to regulate and examine, to the same extent as if the services or activities were performed by a state bank on its own premises:

(1) makes no changes to this subdivision; and

(2) the services or activities of a third-party service provider (TSP) that a state bank or state bank affiliate has contracted for or otherwise arranged to be performed on behalf of the state bank or bank affiliate. Deletes existing text authorizing the commissioner to regulate and examine activities relating to the performance of data processing, electronic fund transfers, or other bank services on behalf of a state bank by a third-party contractor other than a national bank.

(b) Authorizes the commissioner to collect a certain fee from an examined TSP, rather than third-party contractor, and makes a conforming change.

(d) Authorizes the commissioner, to promote regulatory efficiency, if, in the preceding 24 months, a TSP or affiliate has been examined by a federal or state financial services

regulatory agency or by a member agency of the Federal Financial Institutions Examination Council (FFIEC), or its successor agency, to accept the results of that examination instead of conducting the commissioner's own examination of the TSP or affiliate. Requires that nothing in this subsection be construed as limiting or restricting the commissioner from participating in an examination of a TSP or affiliate conducted by a federal or state financial services regulatory agency or by a member agency of FFIEC, or its successor agency.

SECTION 3. Amends Section 31.301(a), Finance Code, as follows:

(a) Includes information directly or indirectly obtained by the Texas Department of Banking (TDB) relating to an affiliate of a financial institution or a TSP of a financial institution or its affiliate among certain information that the commissioner or a TDB employee is prohibited from disclosing, except under certain circumstances. Makes a nonsubstantive change.

SECTION 4. Amends Subchapter D, Chapter 31, Finance Code, by adding Section 31.3015, as follows:

Sec. 31.3015. DISCLOSURE TO STATE BANKS. Authorizes the commissioner to disclose to a state bank information about an affiliate or TSP of the state bank.

SECTION 5. Amends Section 33.106, Finance Code, as follows:

Sec. 33.106. OFFICERS. (a) Creates this subsection from existing text. Prohibits a person, unless the commissioner consents otherwise in writing, from serving as an officer of the state bank if the person is the subject of an order described by Section 35.007(a) or the person has been convicted of a felony.

(b) Creates this subsection from existing text and makes no further changes to this subsection.

SECTION 6. Amends Section 35.007(a), Finance Code, to include serving as a director, officer, or employee of a state trust company or holding company of a state bank among certain actions that a person subject to certain removal or prohibition orders is prohibited from performing.

SECTION 7. Amends Section 35.101, Finance Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Provides that the provisions of this subsection are subject to Subsection (d).

(d) Authorizes the commissioner to terminate an order of supervision at any time.

SECTION 8. Amends Section 35.206(a), Finance Code, as follows:

(a) Provides that on certification by the commissioner, certain records produced or testimony taken as provided by Section 35.203 (Subpoena Authority), rather than Section 35.204 (Enforcement of Subpoena), and held by TDB is admissible as evidence in any case.

SECTION 9. Amends Section 181.002(a), Finance Code, by adding Subdivision (47-b) and amending Subdivision (49), to define "third-party service provider" and redefine "trust business."

SECTION 10. Amends Section 181.106, Finance Code, as follows:

Sec. 181.106. REGULATION AND EXAMINATION OF RELATED ENTITIES. (a) Authorizes the commissioner to regulate and examine, to the same extent as if the services or activities were performed by a state trust company on its own premises:

(1) makes no changes to this subdivision; and

(2) the services or activities of a TSP that a state trust company or state trust company affiliate has contracted for or otherwise arranged to be performed on behalf of the state trust company or state trust company affiliate. Deletes existing text authorizing the commissioner to regulate and examine the performance of data processing, electronic fund transfers, or other services or activities performed on behalf of a state trust company by a third-party contractor.

(b) Authorizes the commissioner to collect a fee from an examined TSP or affiliate in connection with each examination, rather than from the state trust company, to cover the cost of the examination or to collect that fee from the state trust companies that use the examined TSP.

(c) Authorizes the commissioner, to promote regulatory efficiency, if, in the preceding 24 months, a TSP or affiliate has been examined by a federal or state financial services regulatory agency or by a member agency of FFIEC, or its successor agency, to accept the results of that examination instead of conducting the commissioner's own examination of the TSP or affiliate. Requires that nothing in this subsection be construed as limiting or restricting the commissioner from participating in an examination of a TSP or affiliate conducted by a federal or state financial services regulatory agency or by a member agency of FFIEC, or its successor agency.

SECTION 11. Amends Section 181.301(a), Finance Code, as follows:

(a) Provides that, except as expressly provided otherwise by this subtitle (Trust Companies) or a rule adopted under this subtitle, rather than Section 181.003(a)(1) (relating to the authorization to adopt rules to implement and clarify this subtitle), the following are confidential and are prohibited from being disclosed by the commissioner or a TDB employee:

(1) includes certain information relating to an affiliate of the state trust company or a TSP of the state trust company or its affiliate among certain information that is prohibited from being disclosed; and

(2) makes no changes to this subdivision.

SECTION 12. Amends Subchapter D, Chapter 181, Finance Code, by adding Section 181.3015, as follows:

Sec. 181.3015. DISCLOSURE TO STATE TRUST COMPANIES. Authorizes the commissioner to disclose to a state trust company information about an affiliate or TSP of the state trust company.

SECTION 13. Amends Section 181.021, Finance Code, to provide that, subject to Subchapter C (Out-of-State Trust Institution Representative Trust Office), Chapter 187 (Multistate Trust Business), a company does not engage in the trust business in a manner requiring a state charter by acting as a trustee or custodian approved by the Internal Revenue Service under 26 C.F.R. Section 1.408-2(e) of an individual retirement account described by Section 408(a), Internal Revenue Code of 1986.

SECTION 14. Amends Section 183.106(a), Finance Code, as follows:

(a) Prohibits a person, unless the commissioner consents otherwise in writing, from serving as an officer of a state trust company if the person is the subject of an order described by Section 185.007(a), the person has been convicted of a felony, or the person has violated, with respect to a trust under which the state trust company has fiduciary responsibility, Section 113.052 (Loan of Trust Funds to Trustee) or 113.053(a) (relating to the prohibition of buying or selling trust property from or to certain persons), Property

Code, relating to loan of trust funds and purchase or sale of trust property by the trustee, and the violation has not been corrected.

SECTION 15. Amends Section 185.007(a), Finance Code, to include serving as a director, officer, or employee of a holding company of a state bank in the list of prohibited actions for a person subject to certain removal or prohibition orders, except as provided by other law.

SECTION 16. Amends Section 185.101, Finance Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Provides that the provisions of this subsection are subject to Subsection (d).

(d) Authorizes the commissioner to terminate an order of supervision at any time.

SECTION 17. Effective date: September 1, 2017.