

AN ACT

relating to the regulation of banks and trust companies.

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

SECTION 1. Section 31.002(a), Finance Code, is amended by adding Subdivision (55-a) to read as follows:

(55-a) "Third-party service provider" means a person who performs activities relating to the business of banking on behalf of a depository institution for the depository institution's customers or on behalf of another person directly engaged in providing financial services for the person's customers. The term:

(A) includes a person who:

(i) provides data processing services;

(ii) performs activities in support of the provision of financial services, including lending, transferring funds, fiduciary activities, trading activities, and deposit taking activities; or

(iii) provides Internet-related services, including web services, processing electronic bill payments, developing and maintaining mobile applications, system and software development and maintenance, and security monitoring; and

(B) does not include a provider of an interactive computer service or a general audience Internet or communications platform, except to the extent that the service or platform is specially designed or adapted for the business of banking and

1 activities relating to the business of banking.

2 SECTION 2. Section 31.107, Finance Code, is amended by  
3 amending Subsections (a) and (b) and adding Subsection (d) to read  
4 as follows:

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

8 (1) the activities of a state bank affiliate; and

9 (2) the ~~[performance of data processing, electronic~~  
10 ~~fund transfers, or other bank]~~ services or activities of a  
11 third-party service provider that a state bank or state bank  
12 affiliate has contracted for or otherwise arranged to be performed  
13 on behalf of the [a] state bank or state bank affiliate [by a  
14 ~~third-party contractor, other than a national bank].~~

15 (b) The banking commissioner may collect a fee from an  
16 examined third-party service provider [contractor] or affiliate in  
17 connection with each examination to cover the cost of the  
18 examination or may collect that fee from the state banks that use  
19 the examined third-party service provider [contractor].

20 (d) To promote regulatory efficiency, if, in the preceding  
21 24 months, a third-party service provider or affiliate has been  
22 examined by a federal or state financial services regulatory agency  
23 or by a member agency of the Federal Financial Institutions  
24 Examination Council, or its successor agency, the banking  
25 commissioner may accept the results of that examination instead of  
26 conducting the banking commissioner's own examination of the  
27 third-party service provider or affiliate. Nothing in this

1 subsection shall be construed as limiting or restricting the  
2 banking commissioner from participating in an examination of a  
3 third-party service provider or affiliate conducted by a federal or  
4 state financial services regulatory agency or by a member agency of  
5 the Federal Financial Institutions Examination Council, or its  
6 successor agency.

7 SECTION 3. Section 31.301(a), Finance Code, is amended to  
8 read as follows:

9 (a) Except as expressly provided otherwise by this  
10 subtitle, Chapter 11 or 12, or a rule adopted under this subtitle,  
11 the following are confidential and may not be disclosed by the  
12 banking commissioner or an employee of the department:

13 (1) information directly or indirectly obtained by the  
14 department in any manner, including an application or examination,  
15 concerning the financial condition or business affairs of a  
16 financial institution, ~~or~~ a present, former, or prospective  
17 shareholder, officer, director, or affiliate of a financial  
18 institution, or a third-party service provider of a financial  
19 institution or its affiliate, other than information in a published  
20 statement or in the public portion of a call report or profit and  
21 loss statement; and

22 (2) all related files and records of the department.

23 SECTION 4. Subchapter D, Chapter 31, Finance Code, is  
24 amended by adding Section 31.3015 to read as follows:

25 Sec. 31.3015. DISCLOSURE TO STATE BANKS. The banking  
26 commissioner may disclose to a state bank information about an  
27 affiliate or third-party service provider of the state bank.

1 SECTION 5. Section 33.106, Finance Code, is amended to read  
2 as follows:

3 Sec. 33.106. OFFICERS. (a) The board shall annually  
4 appoint the officers of the bank, who serve at the will of the  
5 board. Unless the banking commissioner consents otherwise in  
6 writing, a person may not serve as an officer of the state bank if:

7 (1) the person is the subject of an order described by  
8 Section 35.007(a); or

9 (2) the person has been convicted of a felony.

10 (b) The bank must have a principal executive officer  
11 primarily responsible for the execution of board policies and  
12 operation of the bank and an officer responsible for the  
13 maintenance and storage of all corporate books and records of the  
14 bank and for required attestation of signatures. Those positions  
15 may not be held by the same person. The board may appoint other  
16 officers of the bank as the board considers necessary.

17 SECTION 6. Section 35.007(a), Finance Code, is amended to  
18 read as follows:

19 (a) Except as otherwise provided by law, without the prior  
20 written approval of the banking commissioner, a person subject to a  
21 final and enforceable removal or prohibition order issued by the  
22 banking commissioner, or by another state, federal, or foreign  
23 financial institution regulatory agency, may not:

24 (1) serve as a director, officer, or employee of a  
25 state bank, state [~~or~~] trust company, or holding company of a state  
26 bank, or as a director, officer, or employee with financial  
27 responsibility of any other entity chartered, registered,

1 permitted, or licensed by the banking commissioner under the laws  
2 of this state;

3 (2) directly or indirectly participate in any manner  
4 in the management of such an entity;

5 (3) directly or indirectly vote for a director of such  
6 an entity; or

7 (4) solicit, procure, transfer, attempt to transfer,  
8 vote, or attempt to vote a proxy, consent, or authorization with  
9 respect to voting rights in such an entity.

10 SECTION 7. Section 35.101, Finance Code, is amended by  
11 amending Subsection (c) and adding Subsection (d) to read as  
12 follows:

13 (c) Subject to Subsection (d), a [A] supervisor serves until  
14 the earlier of:

15 (1) the expiration of the period stated in the order of  
16 supervision; or

17 (2) the date the banking commissioner determines that  
18 the requirements for abatement of the order have been satisfied.

19 (d) The banking commissioner may terminate an order of  
20 supervision at any time.

21 SECTION 8. Section 35.206(a), Finance Code, is amended to  
22 read as follows:

23 (a) On certification by the banking commissioner, a book,  
24 record, paper, or document produced or testimony taken as provided  
25 by Section 35.203 [~~35.204~~] and held by the department is admissible  
26 as evidence in any case without prior proof of its correctness and  
27 without other proof. The certified book, record, document, or

1 paper, or a certified copy, is prima facie evidence of the facts it  
2 contains.

3 SECTION 9. Section 181.002(a), Finance Code, is amended by  
4 adding Subdivision (47-b) and amending Subdivision (49) to read as  
5 follows:

6 (47-b) "Third-party service provider" means a person  
7 who performs activities relating to the trust business on behalf of  
8 a trust institution for the trust institution's customers or on  
9 behalf of another person directly engaged in providing financial  
10 services for the person's customers. The term:

11 (A) includes a person who:

12 (i) provides data processing services;

13 (ii) performs activities in support of the  
14 provision of financial services, including lending, transferring  
15 funds, fiduciary activities, trading activities, and deposit  
16 taking activities; or

17 (iii) provides Internet-related services,  
18 including web services, processing electronic bill payments,  
19 developing and maintaining mobile applications, system and  
20 software development and maintenance, and security monitoring; and

21 (B) does not include a provider of an interactive  
22 computer service or a general audience Internet or communications  
23 platform, except to the extent that the service or platform is  
24 specially designed or adapted for the trust business and activities  
25 relating to the trust business.

26 (49) "Trust business" means the business of a company  
27 holding itself out to the public as a fiduciary for hire or

1 compensation to hold or administer accounts. The term includes:

2 (A) the business of a trustee or custodian of an  
3 individual retirement account described by Section 408(a),  
4 Internal Revenue Code of 1986; and

5 (B) the business of an administrator or servicer  
6 of individual retirement accounts described by Section 408(a),  
7 Internal Revenue Code of 1986, who possesses or controls any  
8 assets, including cash, of those accounts and who makes the  
9 administrator's or servicer's services available to the public for  
10 hire or compensation.

11 SECTION 10. Section 181.106, Finance Code, is amended to  
12 read as follows:

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

17 (1) the activities of a state trust company affiliate;  
18 and

19 (2) the ~~[performance of data processing, electronic~~  
20 ~~fund transfers, or other]~~ services or activities of a third-party  
21 service provider that a state trust company or state trust company  
22 affiliate has contracted for or otherwise arranged to be performed  
23 on behalf of the [a] state trust company or state trust company  
24 affiliate [by a third-party contractor].

25 (b) The banking commissioner may collect a fee from an  
26 examined third-party service provider or affiliate in connection  
27 with each examination [the state trust company] to cover the cost of

1 the examination or may collect that fee from the state trust  
2 companies that use the examined third-party service provider.

3 (c) To promote regulatory efficiency, if, in the preceding  
4 24 months, a third-party service provider or affiliate has been  
5 examined by a federal or state financial services regulatory agency  
6 or by a member agency of the Federal Financial Institutions  
7 Examination Council, or its successor agency, the banking  
8 commissioner may accept the results of that examination instead of  
9 conducting the banking commissioner's own examination of the  
10 third-party service provider or affiliate. Nothing in this  
11 subsection shall be construed as limiting or restricting the  
12 banking commissioner from participating in an examination of a  
13 third-party service provider or affiliate conducted by a federal or  
14 state financial services regulatory agency or by a member agency of  
15 the Federal Financial Institutions Examination Council, or its  
16 successor agency.

17 SECTION 11. Section 181.301(a), Finance Code, is amended to  
18 read as follows:

19 (a) Except as expressly provided otherwise by this subtitle  
20 or a rule adopted under this subtitle [~~Section 181.003(a)(1)~~], the  
21 following are confidential and may not be disclosed by the banking  
22 commissioner or an employee of the department:

23 (1) information directly or indirectly obtained by the  
24 department in any manner, including through an application or  
25 examination, concerning the financial condition or business  
26 affairs of a state trust company, ~~[or]~~ a present, former, or  
27 prospective shareholder, participant, officer, director, manager,



1 or affiliate of the state trust company, or a third-party service  
2 provider of the state trust company or its affiliate, other than the  
3 public portions of a report of condition or income statement; and

4 (2) each related file or record of the department.

5 SECTION 12. Subchapter D, Chapter 181, Finance Code, is  
6 amended by adding Section 181.3015 to read as follows:

7 Sec. 181.3015. DISCLOSURE TO STATE TRUST COMPANIES. The  
8 banking commissioner may disclose to a state trust company  
9 information about an affiliate or third-party service provider of  
10 the state trust company.

11 SECTION 13. Section 182.021, Finance Code, is amended to  
12 read as follows:

13 Sec. 182.021. ACTIVITIES NOT REQUIRING CHARTER. Subject to  
14 Subchapter C, Chapter 187, a company does not engage in the trust  
15 business in a manner requiring a state charter by:

16 (1) acting in a manner authorized by law and in the  
17 scope of authority as an agent of a trust institution;

18 (2) rendering a service customarily performed as an  
19 attorney in a manner approved and authorized by the Supreme Court of  
20 Texas or State Bar of Texas;

21 (3) acting as trustee under a deed of trust made only  
22 as security for the payment of money or for the performance of  
23 another act;

24 (4) conducting business as a trust institution if the  
25 exercise of fiduciary powers in this state by the trust institution  
26 is not otherwise prohibited by law;

27 (5) engaging in a business regulated by the Office of

1 Consumer Credit Commissioner, except as limited by rules adopted by  
2 the finance commission;

3 (6) receiving and distributing rents and proceeds of  
4 sale as a licensed real estate broker on behalf of a principal in a  
5 manner authorized by the Texas Real Estate Commission;

6 (7) engaging in a securities transaction or providing  
7 an investment advisory service as a licensed and registered dealer,  
8 salesman, or advisor to the extent that the activity is regulated by  
9 the State Securities Board or the Securities and Exchange  
10 Commission;

11 (8) engaging in the sale and administration of an  
12 insurance product by an insurance company or agent authorized or  
13 licensed by the Texas Department of Insurance to the extent that the  
14 activity is regulated by the Texas Department of Insurance;

15 (9) engaging in the lawful sale of prepaid funeral  
16 benefits under a permit issued by the banking commissioner under  
17 Chapter 154;

18 (10) engaging in the lawful business of a perpetual  
19 care cemetery corporation under Chapter 712, Health and Safety  
20 Code;

21 (11) engaging as a principal in the money services  
22 business under a license issued by the banking commissioner under  
23 Chapter 151;

24 (12) acting as trustee under a voting trust as  
25 provided by Section 6.251, Business Organizations Code;

26 (13) acting as trustee by a public, private, or  
27 independent institution of higher education or a university system,

1 as defined by Section 61.003, Education Code, including an  
2 affiliated foundation or corporation of such an institution or  
3 system acting as trustee as provided by the Education Code;

4 (14) engaging in another activity expressly excluded  
5 from the application of this subtitle by rule of the finance  
6 commission;

7 (15) rendering services customarily performed by a  
8 certified accountant in a manner authorized by the Texas State  
9 Board of Public Accountancy;

10 (16) serving as trustee of a charitable trust as  
11 provided by Section 2.106, Business Organizations Code;

12 (17) performing escrow or settlement services if  
13 licensed or authorized under Title 11, Insurance Code;

14 (18) acting as a qualified intermediary in a tax  
15 deferred exchange under Section 1031, Internal Revenue Code of  
16 1986, and applicable regulations; ~~or~~

17 (19) providing permitted services at a trust  
18 representative office established in this state pursuant to  
19 Subchapter C, Chapter 187; or

20 (20) acting as a trustee or custodian approved by the  
21 Internal Revenue Service under 26 C.F.R. Section 1.408-2(e) of an  
22 individual retirement account described by Section 408(a),  
23 Internal Revenue Code of 1986.

24 SECTION 14. Section 183.106(a), Finance Code, is amended to  
25 read as follows:

26 (a) The board shall annually appoint the officers of the  
27 state trust company, who serve at the will of the board. Unless the

1 banking commissioner consents otherwise in writing, a person may  
2 not serve as an officer of a state trust company if:

3 (1) the person is the subject of an order described by  
4 Section 185.007(a);

5 (2) the person has been convicted of a felony; or

6 (3) the person has violated, with respect to a trust  
7 under which the state trust company has fiduciary responsibility,  
8 Section 113.052 or 113.053(a), Property Code, relating to loan of  
9 trust funds and purchase or sale of trust property by the trustee,  
10 and the violation has not been corrected.

11 SECTION 15. Section 185.007(a), Finance Code, is amended to  
12 read as follows:

13 (a) Except as provided by other law, without the prior  
14 written approval of the banking commissioner, a person subject to a  
15 final and enforceable removal or prohibition order issued by the  
16 banking commissioner, or by another state, federal, or foreign  
17 financial institution regulatory agency, may not:

18 (1) serve as a director, officer, or employee of a  
19 state trust company, ~~or~~ state bank, or holding company of a state  
20 bank, or as a director, officer, or employee with financial  
21 responsibility of any other entity chartered, registered,  
22 permitted, or licensed by the banking commissioner under the laws  
23 of this state while the order is in effect;

24 (2) directly or indirectly participate in any manner  
25 in the management of such an entity;

26 (3) directly or indirectly vote for a director of such  
27 an entity; or

1           (4) solicit, procure, transfer, attempt to transfer,  
2 vote, or attempt to vote a proxy, consent, or authorization with  
3 respect to voting rights in such an entity.

4           SECTION 16. Section 185.101, Finance Code, is amended by  
5 amending Subsection (c) and adding Subsection (d) to read as  
6 follows:

7           (c) Subject to Subsection (d), the ~~[The]~~ supervisor serves  
8 until the earlier of:

9           (1) the expiration of the period stated in the order of  
10 supervision; or

11           (2) the date the banking commissioner determines that  
12 the requirements for abatement of the order have been satisfied.

13           (d) The banking commissioner may terminate an order of  
14 supervision at any time.

15           SECTION 17. This Act takes effect September 1, 2017.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1401 passed the Senate on April 26, 2017, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 26, 2017, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1401 passed the House, with amendment, on May 19, 2017, by the following vote: Yeas 144, Nays 0, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor