FINANCE CODE

TITLE 3. FINANCIAL INSTITUTIONS AND BUSINESSES

SUBTITLE A. BANKS

CHAPTER 31. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 31.001. SHORT TITLE. This subtitle may be cited as the Texas Banking Act.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 31.002. DEFINITIONS. (a) In this subtitle:

(1) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with a bank or other company.

(2) "Bank" means a state or national bank. If the context requires, the term includes a bank as defined by Section 201.002(a)(4) that is organized under the laws of another state or country.

(3) "Bank holding company" has the meaning assigned by the Bank Holding Company Act of 1956 (12 U.S.C. Section 1841 et seq.) or a successor to that Act.

(4) "Banking" means the performance of the exclusive depository institution functions of accepting deposits and discounting loans and the performance of related activities that are not exclusive to banks or other depository institutions, including paying drafts or checks, lending money, and providing related financial services authorized by this subtitle.

(5) "Banking association" means a state bank that is organized under this subtitle as a corporation, authorized to issue shares of stock, and controlled by its shareholders.

(6) "Banking commissioner" means the banking commissioner of Texas or a person designated by the banking commissioner and acting under the banking commissioner's direction and authority.

(7) "Board" means the board of directors of, or a person or group of persons acting in a comparable capacity for, a

state bank or other entity. As the context requires, the term includes the board of managers of a limited banking association.

(8) "Branch" means a location of a bank, other than the bank's home office, at which the bank engages the public in the business of banking. The term does not include:

(A) a drive-in facility located not more than 2,000 feet from the nearest wall of the home office or an approved branch office of the bank;

(B) a night depository;

(C) an electronic terminal;

(D) a deposit or loan production office as described by Section 32.204;

(E) a state or federally licensed armored car service or other courier service transporting items for deposit or payment, unless:

(i) the risk of loss of items in the custody of the service is borne by the employing bank; or

(ii) the items in the custody of the service are considered to be in customer accounts at the employing bank or federally insured through the employing bank;

(F) a location at which the bank offers exclusively nondepository financial products or services to the public, including financial, investment, or economic advisory services;

(G) a location that combines permissible non-branch functions or facilities; or

(H) another office or facility as provided by this subtitle or a rule adopted under this subtitle.

(9) "Capital" means:

(A) the sum of:

(i) the par value of all shares of the state bank having a par value that have been issued;

(ii) the consideration set by the board for all shares of the state bank without par value that have been issued, except a part of that consideration that:

(a) has been actually received;

(b) is less than all of that

consideration; and

(c) the board, by resolution adopted not later than the 60th day after the date of issuance of those shares, has allocated to surplus with the prior approval of the banking commissioner; and

(iii) an amount not included in Subparagraphs (i) and (ii) that has been transferred to capital of the state bank, on the payment of a share dividend or on adoption by the board of a resolution directing that all or part of surplus be transferred to capital, minus each reduction made as permitted by law; less

(B) all amounts otherwise included in Paragraphs (A)(i) and (ii) that are attributable to the issuance of securities by the state bank and that the banking commissioner determines, after notice and an opportunity for hearing, should be classified as debt rather than equity securities.

(10) Repealed by Acts 2007, 80th Leg., R.S., Ch. 110, Sec. 14, eff. September 1, 2007.

(10-a) "Commercial activity" means an activity in which a bank holding company, financial holding company, national bank, or national bank financial subsidiary may not engage under United States law.

(11) "Company" includes a bank, trust company, corporation, partnership, association, business trust, or another trust.

(12) "Conservator" means the banking commissioner or an agent of the banking commissioner exercising the powers and duties provided by Subchapter B, Chapter 35.

(13) "Control" means:

(A) the ownership of or ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, 25 percent or more of the outstanding shares of a class of voting securities of a bank or other company;

(B) the ability to control the election of a majority of the board of a bank or other company;

(C) the power to exercise, directly or indirectly, a controlling influence over the management or policies

of the bank or other company as determined by the banking commissioner after notice and an opportunity for hearing; or

(D) the conditioning of the transfer of 25 percent or more of the outstanding shares of a class of voting securities of a bank or other company on the transfer of 25 percent or more of the outstanding shares of a class of voting securities of another bank or other company.

(14) "Department" means the Texas Department of Banking.

(15) "Deposit" means the establishment of a debtor-creditor relationship represented by the agreement of the deposit debtor to act as a holding, paying, or disbursing agent for the deposit creditor. The term:

(A) includes:

(i) an unpaid balance of money that is received by the deposit debtor in the usual course of business in exchange for conditional or unconditional credit to a commercial, checking, savings, or time account of the deposit creditor or the creditor's designee, or that is evidenced by a certificate of deposit or similar instrument, a certified check or draft drawn against a deposit account, or a letter of credit or traveler's check on which the deposit debtor is primarily liable, but excluding an obligation arising under Chapter 151;

(ii) money or credit given for money received by the deposit debtor in the usual course of business for a special purpose, including money:

(a) held as escrow money, as security for an obligation due to the deposit debtor or another person, or as security for a loan;

(b) left with a deposit debtor by a deposit creditor to meet maturing obligations that are not yet due; and

(c) held by the deposit debtor to meet an acceptance or letter of credit;

(iii) an outstanding draft, cashier's check, money order, or other officer's check issued by the deposit debtor in the usual course of business for any purpose, including

payment for services, dividends, or purchases; and

(iv) an obligation that the finance commission by rule defines as a deposit liability, except that the term may not include money received for immediate application to reduction of an indebtedness; and

(B) does not include an obligation that this subtitle or finance commission rule determines not to be a deposit liability.

(16) "Depository institution" means an entity with the power to accept deposits under applicable law.

(17) "Discount" means the retention by a lender of advance interest from loan proceeds. The term does not include the purchase of a promissory note or similar instrument at less than its face value unless the party selling the note is liable on the note as a maker, endorser, or guarantor.

(18) "Drive-in facility" means a facility offering one or more banking services other than originating or establishing a lending or deposit relationship solely to persons who remain outside the facility.

(19) "Electronic terminal" means an electronic device, other than a telephone or modem operated by a customer of a depository institution, through which a person may initiate an electronic fund transfer, as defined by 15 U.S.C. Section 1693a(6). The term includes a point-of-sale terminal, automated teller machine, or cash dispensing machine.

(20) "Equity capital" means the amount by which the total assets of a state bank exceed the total liabilities of the bank.

(21) "Equity security" means:

(A) stock, other than adjustable rate preferred stock and money market (auction rate) preferred stock;

(B) a certificate of interest or participation in a profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share or participation share, investment contract, voting-trust certificate, or partnership interest;

(C) a security immediately convertible at the

option of the holder without payment of substantial additional consideration into a security described by this subdivision;

(D) a security carrying a warrant or right to subscribe to or purchase a security described by this subdivision; and

(E) a certificate of interest or participation in, temporary or interim certificate for, or receipt for a security described by this subdivision that evidences an existing or contingent equity ownership interest.

(22) "Federal savings association" means a savings and loan association organized under federal law.

(23) "Federal savings bank" means a savings bank organized under federal law.

(24) "Finance commission" means the Finance Commission of Texas.

(25) "Financial institution" means a bank, savings association, or savings bank maintaining an office, branch, or agency office in this state.

(26), (27) Repealed by Acts 1999, 76th Leg., ch. 344, Sec. 9.002(1), eff. May 29, 1999.

(28) Repealed by Acts 2007, 80th Leg., R.S., Ch. 237, Sec. 80, eff. September 1, 2007.

(29) "Hazardous condition" means:

(A) a refusal by a state bank to permit examination of its books, papers, accounts, records, or affairs by the banking commissioner;

(B) a circumstance or condition in which an unreasonable risk of substantial loss is threatened to the depositors, creditors, or shareholders of a state bank, including a circumstance or condition in which a state bank:

(i) has inadequate equity capital, or the adequacy of its equity capital is threatened;

(ii) has concentrated an excessive or unreasonable portion of its assets in a type or character of loan or investment;

(iii) violates or refuses to comply with this subtitle, another statute or rule applicable to state banks,

or a final and enforceable order of the banking commissioner;

(iv) is in a condition that renders the continuation of a particular business practice hazardous to the public or to its depositors and creditors;

(v) conducts business in an unsafe and unsound manner; or

(vi) is insolvent; or

(C) a violation by a state bank of a condition of its chartering or an agreement entered into between the bank and the banking commissioner or the department.

(30) "Home office" means a location registered with the banking commissioner as the bank's home office at which:

(A) the bank does business with the public;

(B) the bank keeps its corporate books and records; and

(C) at least one officer of the bank maintains an office.

(31) "Insolvent" means a circumstance or condition in which a state bank:

(A) is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities;

(B) has equity capital equal to two percent or less of its assets, as determined under regulatory accounting principles;

(C) fails to maintain deposit insurance with the Federal Deposit Insurance Corporation or its successor if the banking commissioner determines that deposit insurance is necessary for the safe and sound operation of the bank;

(D) sells or attempts to sell substantially all of its assets or merges or attempts to merge substantially all of its assets or business with another entity other than as provided by Chapter 32; or

(E) attempts to dissolve or liquidate other than as provided by Chapter 36.

(32) "Investment security" means a marketable

obligation evidencing indebtedness of a person in the form of a bond, note, debenture, or commonly known as an investment security, subject to further definition by rule adopted under this subtitle.

(33) "Limited banking association" means a state bank that is organized under this subtitle as a limited liability company, authorized to issue participation shares, and controlled by its participants.

(34) "Loans and extensions of credit" means direct or indirect advances of money by a state bank to a person that are conditioned on the obligation of the person to repay the money or that are repayable from specific property pledged by or on behalf of the person. The term includes a contractual liability of a state bank to advance money to or on behalf of a person, indebtedness evidenced by a lease financing transaction in which the bank is lessor, an overdraft funded by the bank on behalf of a person except for an intraday or daylight overdraft, or another indebtedness not otherwise classified as an investment security. The term does not include accrued and unpaid interest or discounted interest.

(35) "Manager" means a person elected to the board of a limited banking association.

(36) Repealed by Acts 2007, 80th Leg., R.S., Ch. 237, Sec. 80, eff. September 1, 2007.

(37) "National bank" means a banking association organized under 12 U.S.C. Section 21.

(38) "Officer" means the presiding officer of the board, the principal executive officer, or another officer appointed by the board of a state bank or other company, or a person or group of persons acting in a comparable capacity for the state bank or other company.

(39) "Operating subsidiary" means a company for which a state bank has the ownership, ability, or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than 50 percent of the outstanding shares of each class of voting securities or its equivalent of the company.

(40) "Participant" means an owner of a participation share in a limited banking association.

(41) Repealed by Acts 2007, 80th Leg., R.S., Ch. 237,

Sec. 80, eff. September 1, 2007.

(42) "Participation agreement" means the instrument stating the agreement among the participants of a limited banking association relating to the rights and duties of the participants, including:

(A) allocations of income, loss, deduction, credit, distributions, liquidation rights, redemption rights, and liabilities of participants;

(B) procedures for elections and voting by participants; and

(C) any other matter not prohibited by or inconsistent with this subtitle.

(43) "Participation shares" means the units into which the proprietary interests of a limited banking association are divided or subdivided by means of classes, series, relative rights, or preferences.

(44) "Principal shareholder" means a person who owns or has the ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, 10 percent or more of the outstanding shares or participation shares of any class of voting securities of a bank or other company.

(45) "Regulatory accounting principles" means generally accepted accounting principles as modified by rules adopted under:

(A) this subtitle; or

(B) an applicable federal statute or regulation.

(46) "Savings association" means a state or federal savings association.

(47) "Savings bank" means a state or federal savings bank.

(48) "Shareholder" means an owner of a share in a banking association. As the context requires, the term includes a participant.

(49) "Shares" means the units into which the proprietary interests of a banking association are divided or subdivided by means of classes, series, relative rights, or preferences. As the context requires, the term includes

participation shares.

(50) "State bank" means a banking association or limited banking association organized or reorganized under this subtitle, including an association organized under the laws of this state before September 1, 1995, with the express power to receive and accept deposits and possessing other rights and powers granted by this subtitle expressly or by implication. The term does not include a savings association, savings bank, or credit union. If the context requires, the term includes a bank as defined by Section 201.002(a)(4) that is organized under the laws of another state or country.

(51) "State savings association" means a savings and loan association organized under the laws of this state.

(52) "State savings bank" means a savings bank organized under or subject to Subtitle C. If the context requires, the term includes a savings bank organized under the laws of another state.

(53) "Subsidiary" means a bank or company that is controlled by another person. The term includes a subsidiary of a subsidiary.

(54) "Supervisor" means the banking commissioner or an agent of the banking commissioner exercising the powers and duties specified in Subchapter B, Chapter 35.

(55) "Surplus" means the amount by which the assets of a state bank exceed its liabilities, capital, and undivided profits.

(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;

(iii) for the purpose of furnishing to third parties reports indicating a person's creditworthiness, credit standing, or credit capacity, regularly engages in the practice of assembling or evaluating, and maintaining, public record information and credit account information from persons who furnish that information regularly and in the ordinary course of business; or

(iv) 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 activities relating to the business of banking.

(56) "Unauthorized activity" means an act or practice in this state by a person without a charter, license, permit, registration, or other authority issued or granted by the banking commissioner or other appropriate regulatory authority for which such a charter, license, permit, registration, or other authority is required.

(57) "Undivided profits" means the part of equity capital of a state bank equal to the balance of its net profits, income, gains, and losses since the date of its formation, minus subsequent distributions to shareholders and transfers to surplus or capital under share dividends or appropriate board resolutions. The term includes amounts allocated to undivided profits as a result of a merger.

(58) "Voting security" means a share or other evidence of proprietary interest in a state bank or other company that has as an attribute the right to vote or participate in the election of the board of the state bank or other company, regardless of whether the right is limited to the election of fewer than all of the board members. The term includes a security that is convertible or exchangeable into a voting security.

(b) The definitions shall be liberally construed to accomplish the purposes of this subtitle.

(c) The finance commission by rule may adopt other definitions to accomplish the purposes of this subtitle.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.002, 9.002, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 528, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 14, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 217 (H.B. 944), Sec. 1, eff. May 25, 2007.

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 80, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 2, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. 1823), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 9.001, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 989 (H.B. 3574), Sec. 1, eff. June 18, 2023.

Sec. 31.003. BANKING RULES. (a) The finance commission may adopt rules to accomplish the purposes of this subtitle and Chapters 11, 12, and 13, including rules necessary or reasonable to:

(1) implement and clarify this subtitle and Chapters 11, 12, and 13;

(2) preserve or protect the safety and soundness of state banks;

(3) grant at least the same rights and privileges to state banks that are or may be granted to national banks domiciled

in this state;

(4) recover the cost of maintaining and operating the department and the cost of enforcing this subtitle and other applicable law by imposing and collecting ratable and equitable fees for notices, applications, and examinations; and

(5) facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission.

(b) In adopting rules, the finance commission shall consider the need to:

(1) promote a stable banking environment;

(2) provide the public with convenient, safe, and competitive banking services;

(3) preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system; and

(4) allow for economic development in this state.

(c) The presence or absence in this subtitle or Chapter 11, 12, or 13 of a specific reference to rules regarding a particular subject does not enlarge or diminish the rulemaking authority provided by this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 2, eff. Sept. 1, 2001.

Sec. 31.004. UNAUTHORIZED BANKING. (a) Except as otherwise provided by law, a person other than a depository institution authorized to conduct business in this state may not conduct the business of banking or represent to the public that it is conducting the business of banking in this state.

(b) This section does not prohibit the continued operation of a bank, trust company, bank and trust company, or savings bank by:

(1) a person, partnership, trustee, or trustee operating under a common law declaration of trust who:

(A) was actively engaged in the operation of the institution on June 13, 1923; or

(B) operated the institution for any period of at

least 20 years before June 13, 1923, and resumed operations of the institution not later than June 13, 1924; or

(2) a legal representative or successor of a person or entity described by Subdivision (1).

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 31.005. IMPLYING THAT PERSON IS BANK. (a) A person may not use the term "bank," "bank and trust," or a similar term or a character, ideogram, phonogram, phrase, or foreign language word in its name, stationery, or advertising in a manner that would imply to the public that the person is engaged in the business of banking in this state.

(b) Subsection (a) does not apply to a federally insured depository institution organized under the laws of this state, another state, the United States, or a foreign sovereign state to the extent that the depository institution or other entity is:

(1) authorized under its charter or the laws of this state or the United States to use a term, word, character, ideogram, phonogram, or phrase prohibited by Subsection (a); and

(2) authorized by the laws of this state or the United States to conduct the activities in which it is engaged in this state.

(c) A person violating this section is subject to an enforcement action initiated by the banking commissioner under Subchapter C, Chapter 35, except that the maximum administrative penalty under Section 35.211 for violation involving only Subsection (a) is $500 for each day the violation continues.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.003, eff. Sept. 1, 1999.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 989 (H.B. 3574), Sec. 2, eff. June 18, 2023.

Sec. 31.006. LIABILITY OF DEPOSITORY INSTITUTION DIRECTORS AND PERSONNEL. (a) The provisions of the Business Organizations Code regarding liability, defenses, and indemnification of a director, officer, agent, or employee of a corporation apply to a

director, officer, agent, or employee of a depository institution in this state. Except as limited by those provisions, a disinterested director, officer, or employee of a depository institution may not be held personally liable in an action seeking monetary damages arising from the conduct of the depository institution's affairs unless the damages resulted from the gross negligence or wilful or intentional misconduct of the person during the person's term of office or service with the depository institution.

(b) A director, officer, or employee of a depository institution is disinterested with respect to a decision or transaction if:

(1) the person fully discloses any interest in the decision or transaction and does not participate in the decision or transaction; or

(2) the decision or transaction does not involve any of the following:

(A) personal profit for the person through dealing with the depository institution or usurping an opportunity of the depository institution;

(B) buying or selling an asset of the depository institution in a transaction in which the person has a direct or indirect pecuniary interest;

(C) dealing with another depository institution or other person in which the person is a director, officer, or employee or otherwise has a significant direct or indirect financial interest; or

(D) dealing with a family member of the person.

(c) A director or officer who, in performing the person's duties and functions, acts in good faith and reasonably believes that reliance is warranted is entitled to rely on information, including an opinion, report, financial statement or other type of statement or financial data, decision, judgment, or performance, prepared, presented, made, or rendered by:

(1) one or more directors, officers, or employees of the depository institution, or of an entity under joint or common control with the depository institution, who the director or

officer reasonably believes merit confidence;

(2) legal counsel, a public accountant, or another person who the director or officer reasonably believes merits confidence; or

(3) a committee of the board of which the director is not a member.

(d) In this section, "family member" means a person's:

(1) spouse;

(2) minor child; or

(3) adult child who resides in the person's home.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 3, eff. September 1, 2007.

Sec. 31.007. EXEMPTION OF BANK DIRECTORS AND PERSONNEL FROM SECURITIES LAW. (a) An officer, director, or employee of a bank that has its main office or a branch located in this state with fewer than 500 shareholders or of a bank holding company with fewer than 500 shareholders that controls a bank that has its main office or a branch located in this state is exempt from the registration and licensing provisions of The Securities Act (Title 12, Government Code) with respect to that person's participation in a transaction, including a sale, involving securities issued by:

(1) the bank or bank holding company of which that person is an officer, director, or employee;

(2) a bank holding company that controls the bank of which that person is an officer, director, or employee; or

(3) a bank controlled by the bank holding company of which that person is an officer, director, or employee.

(b) A person may not be compensated for services performed under the exemption provided by this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.004, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 4, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.11, eff. January 1, 2022.

SUBCHAPTER B. REGULATION OF BANKING BY BANKING COMMISSIONER

Sec. 31.101. GENERAL DUTIES OF BANKING COMMISSIONER. The banking commissioner shall:

(1) supervise and regulate, as provided by this subtitle, Subtitles F and G, and Chapter 12, state banks, trust companies, and state-licensed foreign bank branches, agencies, and representative offices;

(2) administer and enforce this subtitle, Subtitles F and G, and Chapter 12 in person, through a deputy banking commissioner or another officer or employee of the department, or through a supervisor, conservator, or other agent; and

(3) administer and enforce laws other than this subtitle, Subtitles F and G, and Chapter 12 as directed by those other laws.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.50, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 412, Sec. 2.01, eff. Sept. 1, 2001.

Sec. 31.102. ISSUANCE OF INTERPRETIVE STATEMENTS. (a) The banking commissioner may issue interpretive statements containing matters of general policy to guide the public and state banks, and may amend or repeal a published interpretive statement by issuing an amended statement or notice of repeal of a statement.

(b) An interpretive statement may be disseminated by newsletter, via an electronic medium such as the internet, in a volume of statutes or related materials published by the banking commissioner or others, or by other means reasonably calculated to notify persons affected by the interpretive statement. Notice of an amended or withdrawn statement must be disseminated in a substantially similar manner as the affected statement was originally disseminated.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.005, eff. Sept. 1, 1999.

Sec. 31.103. ISSUANCE OF OPINION. (a) In response to a specific request from a member of the public or the banking industry, the banking commissioner may issue an opinion directly or through a deputy banking commissioner or department attorney.

(b) If the banking commissioner determines that the opinion is useful for the general guidance of the public, state banks, or trust companies, the commissioner may disseminate the opinion by newsletter, via an electronic medium such as the internet, in a volume of statutes or related materials published by the banking commissioner or others, or by other means reasonably calculated to notify persons affected by the opinion. A published opinion must be redacted to preserve the confidentiality of the requesting party unless the requesting party consents to be identified in the published opinion.

(c) The banking commissioner may amend or repeal a published opinion by issuing an amended opinion or notice of repeal of an opinion and disseminating the opinion or notice in a substantially similar manner as the affected statement or opinion was originally disseminated. The requesting party, however, may rely on the original opinion if:

(1) all material facts were originally disclosed to the banking commissioner;

(2) the safety and soundness of the affected bank will not be affected by further reliance on the original opinion; and

(3) the text and interpretation of relevant, governing provisions of this subtitle or Chapter 12 have not been changed by legislative or judicial action.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.005, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 412, Sec. 2.02, eff. Sept. 1, 2001.

Sec. 31.104. EFFECT OF INTERPRETIVE STATEMENT OR OPINION. An interpretive statement or opinion issued under this subchapter does not have the force of law and is not a rule for the purposes of Chapter 2001, Government Code, unless adopted by the finance commission as provided by Chapter 2001, Government Code. An

interpretive statement or opinion is an administrative construction of this subtitle or Chapter 12 entitled to great weight if the construction is reasonable and does not conflict with this subtitle or Chapter 12.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 31.105. EXAMINATION REQUIRED. (a) The banking commissioner shall examine each state bank annually, or on another periodic basis as may be required by rule or policy, or as the commissioner considers necessary to:

(1) safeguard the interests of depositors, creditors, and shareholders; and

(2) efficiently enforce applicable law.

(b) The banking commissioner may:

(1) accept an examination of a state bank by a federal or other governmental agency instead of an examination under this section; or

(2) conduct an examination of a state bank jointly with a federal or other governmental agency.

(c) The banking commissioner may:

(1) administer oaths and examine persons under oath on any subject that the commissioner considers pertinent to the financial condition or the safety and soundness of the activities of a state bank; and

(2) subpoena witnesses and require and compel by subpoena the production of documents not voluntarily produced.

(c-1) If a person refuses to obey a subpoena, a district court of Travis County, on application by the commissioner, may issue an order requiring the person to appear before the commissioner and produce documents or give evidence regarding the matter under examination or investigation.

(c-2) If a person currently serving as an officer, director, employee, controlling shareholder, or other position participating in the affairs of a state bank refuses to comply with a subpoena, the banking commissioner may issue an order on an emergency basis removing the person from the person's position and prohibiting the person from participating in the affairs of the state bank or any

other entity chartered, registered, permitted, or licensed by the banking commissioner until the person complies with the subpoena.

(d) Disclosure of information to the banking commissioner pursuant to an examination request or a subpoena issued under this section does not constitute a waiver of or otherwise affect or diminish an evidentiary privilege to which the information is otherwise subject. A report of an examination under this section is confidential and may be disclosed only under the circumstances provided by this subtitle.

(e) A subpoena issued to a financial institution under this section is not subject to Section 59.006.

(f) Except to the extent disclosure is necessary to locate and produce responsive records or obtain legal representation and subject to Subsection (g), a subpoena issued under this section may provide that the person to whom the subpoena is directed or any person who comes into receipt of the subpoena may not:

(1) disclose that the subpoena has been issued;

(2) disclose or describe any records requested in the subpoena;

(3) disclose whether records have been furnished in response to the subpoena; or

(4) if the subpoena requires a person to be examined under oath, disclose or describe the examination, including the questions asked, the testimony given, or the transcript produced.

(g) A subpoena issued under this section may prohibit the disclosure of information described by Subsection (f) only if the banking commissioner finds, and the subpoena states, that:

(1) the subpoena, the examination, or the records relate to an ongoing investigation; and

(2) the disclosure could significantly impede or jeopardize the investigation.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 2.03, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 5, eff.

September 1, 2007.

Reenacted by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 10.002, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 3, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. 1823), Sec. 2, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 989 (H.B. 3574), Sec. 3, eff. June 18, 2023.

Sec. 31.106. COST OF REGULATION. Each state bank shall pay, through the imposition and collection of fees established by the finance commission under Section 31.003(a)(4):

(1) the cost of examination;

(2) the equitable or proportionate cost of maintenance and operation of the department; and

(3) the cost of enforcement of this subtitle and Chapter 12.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 31.107. REGULATION AND EXAMINATION OF RELATED ENTITIES. (a) The banking commissioner may regulate and examine, to the same extent as if the services or activities were performed by a state bank on its own premises:

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

(2) the services or activities of a third-party service provider that a state bank or state bank affiliate has contracted for or otherwise arranged to be performed on behalf of the state bank or state bank affiliate.

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

(c) For purposes of this section, a state bank affiliate does not include a company in which ownership or membership is

limited to individuals and conditioned by law on the existence and maintenance of professional licensing.

(d) To promote regulatory efficiency, if, in the preceding 24 months, a third-party service provider 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, or its successor agency, the banking commissioner may accept the results of that examination instead of conducting the banking commissioner's own examination of the third-party service provider or affiliate. Nothing in this subsection shall be construed as limiting or restricting the banking commissioner from participating in an examination of a third-party service provider or affiliate conducted by a federal or state financial services regulatory agency or by a member agency of the Federal Financial Institutions Examination Council, or its successor agency.

(e) A third-party service provider that refuses to submit to examination or to pay an assessed fee for examination under this section is subject to an enforcement action under Chapter 35. With respect to a third-party service provider's refusal to submit to examination, the banking commissioner may notify all state banks of the refusal and warn that continued use of the third-party service provider may constitute an unsafe and unsound banking practice.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. 1823), Sec. 3, eff. September 1, 2019.

Sec. 31.108. CALL REPORT; PENALTY. (a) A state bank shall file with the banking commissioner a copy of its call report stating the bank's financial condition and results of operation.

(b) The finance commission by rule may:

(1) require call reports to be filed with the banking commissioner at the intervals the commission determines;

(2) specify the form of a call report, including the

confidential and public information to be in the call report; and

(3) require public information in call reports of state banks to be published at the times and in the publications and locations the commission determines.

(c) A state bank that fails to timely file its call report as required by this section is subject to a penalty not exceeding $500 a day to be collected by suit by the attorney general on behalf of the banking commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER C. ADMINISTRATIVE PROCEDURE

Sec. 31.201. BANKING COMMISSIONER HEARING; INFORMAL DISPOSITION. (a) The banking commissioner may convene a hearing to receive evidence and argument regarding any matter within the jurisdiction of and before the banking commissioner for decision or review. The hearing must be conducted under Chapter 2001, Government Code. A matter made confidential by law must be considered by the banking commissioner in a closed hearing.

(b) A hearing before the banking commissioner that is required or authorized by law may be conducted by a hearing officer on behalf of the banking commissioner.

(c) This section does not grant a right to hearing to a person that is not otherwise granted by governing law.

(d) The banking commissioner may informally dispose of a matter within the jurisdiction of and before the banking commissioner by consent order, agreed settlement, or default.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 2.04, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. 3555), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. 3555), Sec. 2, eff. September 1, 2015.

Sec. 31.202. APPEAL OF BANKING COMMISSIONER DECISION OR ORDER. Except as expressly provided otherwise by this subtitle, an

appellant may appeal a decision or order of the banking commissioner made under this subtitle or Chapter 12 after a hearing to a district court in Travis County as provided by Section 31.204.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 11, eff. September 1, 2019.

Sec. 31.204. APPEAL TO DISTRICT COURT. A person affected by a final order of the banking commissioner may appeal the final order by filing a petition for judicial review in a district court in Travis County as provided by Chapter 2001, Government Code. A petition for judicial review filed in the district court does not stay or vacate the appealed order unless the court, after notice and hearing, expressly stays or vacates the order.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 11, eff. September 1, 2019.

SUBCHAPTER D. CONFIDENTIALITY OF INFORMATION

Sec. 31.301. DISCLOSURE BY DEPARTMENT PROHIBITED. (a) Except as expressly provided otherwise by this subtitle, Chapter 11 or 12, or a rule adopted under this subtitle, the following are confidential and may not be disclosed by the banking commissioner or an employee of the department:

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

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

(b) Information obtained by the department from a federal or state regulatory agency that is confidential under federal or state law may not be disclosed except as provided by federal or state law.

(c) The banking commissioner or an officer or employee of the department commits an offense if the person:

(1) discloses information or permits access to a file or record of the department; and

(2) knows at the time of disclosure or permission that the disclosure or permission violates this subchapter.

(d) An offense under this section is a Class A misdemeanor.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 2.05, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 6, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 3, eff. September 1, 2017.

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

Added by Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 4, eff. September 1, 2017.

Sec. 31.302. DISCLOSURE TO FINANCE COMMISSION. Confidential information may not be disclosed to a member of the finance commission, and a member of the commission may not be given access to the files and records of the department except that the banking commissioner may disclose to the commission information, files, and records pertinent to a hearing or matter pending before the commission.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 31.303. DISCLOSURE TO OTHER AGENCIES. (a) For purposes of this section:

(1) "Affiliated group" means two or more persons affiliated through common ownership or a contractual common

undertaking involving the sharing of customer information among those persons.

(2) "Agency" means a department or agency of this state, another state, the United States, or a foreign government with whom the United States currently maintains diplomatic relations, or any related agency or instrumentality.

(3) "Functional regulatory agency" means an agency that regulates and charters, licenses, or registers persons engaged in financial activities or activities incidental or complimentary to financial activities, including activities related to banking, insurance, or securities, within the jurisdiction of the agency.

(4) "Privilege" includes any work-product, attorney-client, or other privilege recognized under federal or state law.

(b) The banking commissioner may, as the commissioner considers necessary or proper to the enforcement of the laws of this state, another state, the United States, or a foreign sovereign state with whom the United States currently maintains diplomatic relations, or in the best interest of the public, disclose information in the possession of the department to another agency. The banking commissioner may not disclose information under this section that is confidential under applicable state or federal law unless:

(1) the recipient agency agrees to maintain the confidentiality and take all reasonable steps to oppose an effort to secure disclosure of the information from the agency; or

(2) the banking commissioner determines in the exercise of discretion that the interest of law enforcement outweighs and justifies the potential for disclosure of the information by the recipient agency.

(c) The banking commissioner by agreement may establish an information sharing and exchange program with a functional regulatory agency that has overlapping regulatory jurisdiction with the department, with respect to all or part of an affiliated group that includes a financial institution, to reduce the potential for duplicative and burdensome filings, examinations, and other regulatory activities. Each agency party to the

agreement must agree to maintain confidentiality of information that is confidential under applicable state or federal law and take all reasonable steps to oppose any effort to secure disclosure of the information from the agency. An agreement may also specify procedures regarding use and handling of confidential information and identify types of information to be shared and procedures for sharing on a recurring basis.

(d) Disclosure of information by or to the banking commissioner under this section 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.

(e) Notwithstanding other law, an agency of this state:

(1) may execute, honor, and comply with an agreement to maintain confidentiality and oppose disclosure of information obtained from the banking commissioner as provided in this section; and

(2) shall treat as confidential any information obtained from the banking commissioner that is entitled to confidential treatment under applicable state or federal law and take all reasonable steps to oppose an effort to secure disclosure of the information from the agency.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 3, eff. Sept. 1, 2001.

Sec. 31.304. OTHER DISCLOSURE PROHIBITED; PENALTY. (a) Confidential information that is provided to a financial institution, affiliate, or service provider of a financial institution, whether in the form of a report of examination or otherwise, is the confidential property of the department. The information may not be made public or disclosed by the recipient or by an officer, director, manager, employee, or agent of the recipient to a person not officially connected to the recipient as officer, director, employee, attorney, auditor, or independent auditor except as authorized by rules adopted under this subtitle.

(b) A person commits an offense if the person discloses or uses information in violation of this section. An offense under

this section is punishable as if it were an offense under Section 37.10, Penal Code.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 31.305. CIVIL DISCOVERY. Civil discovery of confidential information from a person subject to Section 31.304 under subpoena or other legal process must comply with rules adopted under this subtitle and other applicable law. The rules may:

(1) restrict release of confidential information to the portion directly relevant to the legal dispute at issue; and

(2) require that a protective order, in form and under circumstances specified by the rules, be issued by a court before release of the confidential information.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 2.06, eff. Sept. 1, 2001.

Sec. 31.306. INVESTIGATIVE INFORMATION. Notwithstanding any other law, the banking commissioner may refuse to release information or records in the custody of the department if, in the opinion of the commissioner, release of the information or records might jeopardize an ongoing investigation of potentially unlawful activities.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 31.307. EMPLOYMENT INFORMATION. (a) A person may provide employment information concerning the known or suspected involvement of a present or former employee, officer, or director of a financial institution in a violation of a state or federal law, rule, or regulation that has been reported to appropriate state or federal authorities to:

(1) the financial institution; or

(2) a person providing employment information to the financial institution.

(b) A person may not be held liable for providing information under Subsection (a) unless the information provided is false and the person provided the information with disregard for

the truth.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 31.308. SHAREHOLDER INSPECTION RIGHTS. (a) Notwithstanding Section 21.218 or 101.502, Business Organizations Code, a shareholder of a state bank may not examine:

(1) a report of examination or other confidential property of the department that is in the possession of the state bank; or

(2) a book or record of the state bank that directly or indirectly pertains to financial or other information maintained by the bank on behalf of its customers, including a specific item in the minutes of the board or a committee of the board regarding loan review and approval or a loan delinquency report that would tend to identify the bank's customer.

(b) This section does not affect a right of a shareholder of a state bank acting in another capacity.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 7, eff. September 1, 2007.