

1-1 By: Parker (Senate Sponsor - Eltife) H.B. No. 3555
 1-2 (In the Senate - Received from the House May 4, 2015;
 1-3 May 4, 2015, read first time and referred to Committee on Business
 1-4 and Commerce; May 12, 2015, reported favorably by the following
 1-5 vote: Yeas 7, Nays 0; May 12, 2015, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10			X	
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to certain administrative procedures and enforcement
 1-20 authority relating to state banks, state trust companies, and bank
 1-21 holding companies.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. The heading to Section 31.201, Finance Code, is
 1-24 amended to read as follows:

1-25 Sec. 31.201. BANKING COMMISSIONER HEARING; INFORMAL
 1-26 DISPOSITION.

1-27 SECTION 2. Section 31.201, Finance Code, is amended by
 1-28 adding Subsection (d) to read as follows:

1-29 (d) The banking commissioner may informally dispose of a
 1-30 matter within the jurisdiction of and before the banking
 1-31 commissioner by consent order, agreed settlement, or default.

1-32 SECTION 3. Subchapter A, Chapter 35, Finance Code, is
 1-33 amended by adding Section 35.0001 to read as follows:

1-34 Sec. 35.0001. APPLICABILITY TO BANK SUBSIDIARIES. This
 1-35 subchapter applies to a subsidiary of a state bank, a present or
 1-36 former officer, director, or employee of a subsidiary, or a
 1-37 controlling shareholder or other person participating in the
 1-38 affairs of a subsidiary in the same manner as the subchapter applies
 1-39 to a state bank, a present or former officer, director, or employee
 1-40 of a state bank, or a controlling shareholder or other person
 1-41 participating in the affairs of a state bank.

1-42 SECTION 4. Section 35.002, Finance Code, is amended by
 1-43 adding Subsection (b-1) to read as follows:

1-44 (b-1) A proposed cease and desist order may require an
 1-45 officer, employee, or director of a state bank, or the bank itself
 1-46 acting through an authorized person, to cease or desist from a
 1-47 violation or other practice or to take affirmative action to
 1-48 correct the conditions resulting from a violation or other
 1-49 practice, including the payment of restitution or other action that
 1-50 the banking commissioner determines is appropriate.

1-51 SECTION 5. Subchapter A, Chapter 35, Finance Code, is
 1-52 amended by adding Section 35.0035 to read as follows:

1-53 Sec. 35.0035. REMOVAL OR PROHIBITION ORDERS IN RESPONSE TO
 1-54 CERTAIN CRIMINAL OFFENSES. (a) For purposes of this section, a
 1-55 person is considered to have been finally convicted of an offense if
 1-56 the person's case is not subject to further appellate review and:

1-57 (1) a sentence was imposed on the person;

1-58 (2) the person received probation or community
 1-59 supervision, including deferred adjudication community
 1-60 supervision; or

1-61 (3) the court deferred final disposition of the

2-1 person's case.

2-2 (b) The banking commissioner has grounds to remove or
 2-3 prohibit a present or former officer, director, or employee of a
 2-4 state bank from office or employment in, or prohibit a controlling
 2-5 shareholder or other person participating in the affairs of a state
 2-6 bank from further participation in the affairs of, a state bank or
 2-7 any other entity chartered, registered, permitted, or licensed by
 2-8 the banking commissioner if the person has been finally convicted
 2-9 of a felony offense involving:

2-10 (1) a bank or other financial institution;

2-11 (2) dishonesty; or

2-12 (3) breach of trust.

2-13 (c) If the banking commissioner has grounds for action under
 2-14 Subsection (b), the banking commissioner may serve a removal or
 2-15 prohibition order, as appropriate, on the person who has been
 2-16 finally convicted of a felony offense. The banking commissioner
 2-17 shall also serve a copy of the order on any state bank that the
 2-18 person is affiliated with at the time of service of the order.

2-19 (d) An order issued under this section becomes effective
 2-20 immediately on service and continues in effect unless the order is:

2-21 (1) stayed or terminated by the banking commissioner;

2-22 (2) set aside by the banking commissioner after a
 2-23 hearing; or

2-24 (3) stayed or vacated on appeal.

2-25 (e) Not later than the 30th day after the date an order is
 2-26 served under this section, the person against whom the order is
 2-27 issued may request in writing a hearing before the banking
 2-28 commissioner to show that the person's continued service to a state
 2-29 bank or participation in the affairs of a state bank does not, or is
 2-30 unlikely to, threaten the interests of the depositors, creditors,
 2-31 or shareholders of the state bank or the public confidence in the
 2-32 state bank.

2-33 (f) Not later than the 30th day after the date the request
 2-34 for a hearing is received under this section, the banking
 2-35 commissioner shall hold the hearing, unless the party requesting
 2-36 the hearing requests a later date. At the hearing, the party
 2-37 requesting the hearing has the burden of proof.

2-38 (g) After the hearing, the banking commissioner may affirm,
 2-39 modify, or set aside, in whole or in part, the order. An order
 2-40 affirming or modifying the order is immediately final for purposes
 2-41 of enforcement and appeal. The order may be appealed as provided by
 2-42 Sections [31.202](#), [31.203](#), and [31.204](#).

2-43 SECTION 6. Subchapter B, Chapter 35, Finance Code, is
 2-44 amended by adding Section 35.1001 to read as follows:

2-45 Sec. 35.1001. APPLICABILITY TO BANK SUBSIDIARIES. This
 2-46 subchapter applies to a subsidiary of a state bank, a present or
 2-47 former officer, director, or employee of a subsidiary, or a
 2-48 controlling shareholder or other person participating in the
 2-49 affairs of a subsidiary in the same manner as the subchapter applies
 2-50 to a state bank, a present or former officer, director, or employee
 2-51 of a state bank, or a controlling shareholder or other person
 2-52 participating in the affairs of a state bank.

2-53 SECTION 7. The heading to Section [181.201](#), Finance Code, is
 2-54 amended to read as follows:

2-55 Sec. 181.201. BANKING COMMISSIONER HEARING; INFORMAL
 2-56 DISPOSITION.

2-57 SECTION 8. Section [181.201](#), Finance Code, is amended by
 2-58 adding Subsection (d) to read as follows:

2-59 (d) The banking commissioner may informally dispose of a
 2-60 matter within the jurisdiction of and before the banking
 2-61 commissioner by consent order, agreed settlement, or default.

2-62 SECTION 9. Subchapter A, Chapter 185, Finance Code, is
 2-63 amended by adding Section 185.0001 to read as follows:

2-64 Sec. 185.0001. APPLICABILITY TO STATE TRUST COMPANY
 2-65 SUBSIDIARIES. This subchapter applies to a subsidiary of a state
 2-66 trust company, a present or former officer, director, manager,
 2-67 managing participant, or employee of a subsidiary, or a controlling
 2-68 shareholder or other person participating in the affairs of a
 2-69 subsidiary in the same manner as the subchapter applies to a state

3-1 trust company, a present or former officer, director, manager,
3-2 managing participant, or employee of a state trust company, or a
3-3 controlling shareholder or other person participating in the
3-4 affairs of a state trust company.

3-5 SECTION 10. Section 185.002, Finance Code, is amended by
3-6 adding Subsection (b-1) to read as follows:

3-7 (b-1) A proposed cease and desist order may require an
3-8 officer, employee, director, manager, or managing participant of a
3-9 state trust company, or the state trust company itself acting
3-10 through an authorized person, to cease or desist from a violation or
3-11 other practice or to take affirmative action to correct the
3-12 conditions resulting from a violation or other practice, including
3-13 the payment of restitution or other action that the banking
3-14 commissioner determines is appropriate.

3-15 SECTION 11. Section 185.003(a), Finance Code, is amended to
3-16 read as follows:

3-17 (a) The banking commissioner has grounds to remove or
3-18 prohibit a present or former officer, director, manager, managing
3-19 participant, or employee of a state trust company from office or
3-20 employment in, or prohibit a controlling shareholder or participant
3-21 or other person participating in the affairs of a state trust
3-22 company from further participation in the affairs of, the state
3-23 trust company or any other entity chartered, registered, permitted,
3-24 or licensed by the banking commissioner if the banking commissioner
3-25 determines from examination or other credible evidence that:

3-26 (1) the person:

3-27 (A) intentionally committed or participated in
3-28 the commission of an act described by Section 185.002(a) with
3-29 regard to the affairs of a financial institution, as defined by
3-30 Section 201.101;

3-31 (B) violated a final cease and desist order
3-32 issued by a state or federal regulatory agency against the person or
3-33 an entity in which the person is or was an officer, director, or
3-34 employee; or

3-35 (C) made, or caused to be made, false entries in
3-36 the records of a financial institution;

3-37 (2) because of this action by the person:

3-38 (A) the financial institution has suffered or
3-39 will probably suffer financial loss or expense, or other damage;

3-40 (B) the interests of the clients, depositors,
3-41 creditors, or shareholders of the financial institution have been
3-42 or could be prejudiced; or

3-43 (C) the person has received financial gain or
3-44 other benefit by reason of the action, or likely would have if the
3-45 action had not been discovered; and

3-46 (3) that action by the person:

3-47 (A) involves personal dishonesty on the part of
3-48 the person; or

3-49 (B) demonstrates wilful or continuing disregard
3-50 for the safety or soundness of the financial institution.

3-51 SECTION 12. Subchapter A, Chapter 185, Finance Code, is
3-52 amended by adding Section 185.0035 to read as follows:

3-53 Sec. 185.0035. REMOVAL OR PROHIBITION ORDERS IN RESPONSE TO
3-54 CERTAIN CRIMINAL OFFENSES. (a) For purposes of this section, a
3-55 person is considered to have been finally convicted of an offense if
3-56 the person's case is not subject to further appellate review and:

3-57 (1) a sentence was imposed on the person;

3-58 (2) the person received probation or community
3-59 supervision, including deferred adjudication community
3-60 supervision; or

3-61 (3) the court deferred final disposition of the
3-62 person's case.

3-63 (b) The banking commissioner has grounds to remove or
3-64 prohibit a present or former officer, director, manager, managing
3-65 participant, or employee of a state trust company from office or
3-66 employment in, or prohibit a controlling shareholder or participant
3-67 or other person participating in the affairs of a state trust
3-68 company from further participation in the affairs of, the state
3-69 trust company or any other entity chartered, registered, permitted,

4-1 or licensed by the banking commissioner if the person has been
4-2 finally convicted of a felony offense involving:

4-3 (1) a financial institution, as defined by Section
4-4 201.101;

4-5 (2) dishonesty; or

4-6 (3) breach of trust.

4-7 (c) If the banking commissioner has grounds for action under
4-8 Subsection (b), the banking commissioner may serve a removal or
4-9 prohibition order, as appropriate, on the person who has been
4-10 finally convicted of a felony offense. The banking commissioner
4-11 shall also serve a copy of the order on any state trust company that
4-12 the person is affiliated with at the time of service of the order.

4-13 (d) An order issued under this section becomes effective
4-14 immediately on service and continues in effect unless the order is:

4-15 (1) stayed or terminated by the banking commissioner;

4-16 (2) set aside by the banking commissioner after a
4-17 hearing; or

4-18 (3) stayed or vacated on appeal.

4-19 (e) Not later than the 30th day after the date an order is
4-20 served under this section, the person against whom the order is
4-21 issued may request in writing a hearing before the banking
4-22 commissioner to show that the person's continued service to a state
4-23 trust company or participation in the affairs of a state trust
4-24 company does not, or is unlikely to, threaten the interests of the
4-25 clients, depositors, creditors, or shareholders of the state trust
4-26 company or the public confidence in the state trust company.

4-27 (f) Not later than the 30th day after the date a request for
4-28 a hearing is received under this section, the banking commissioner
4-29 shall hold the hearing, unless the party requesting the hearing
4-30 requests a later date. At the hearing, the party requesting the
4-31 hearing has the burden of proof.

4-32 (g) After the hearing, the banking commissioner may affirm,
4-33 modify, or set aside, in whole or in part, the order. An order
4-34 affirming or modifying the order is immediately final for purposes
4-35 of enforcement and appeal. The order may be appealed as provided by
4-36 Sections 181.202, 181.203, and 181.204.

4-37 SECTION 13. Subchapter B, Chapter 185, Finance Code, is
4-38 amended by adding Section 185.1001 to read as follows:

4-39 Sec. 185.1001. APPLICABILITY TO STATE TRUST COMPANY
4-40 SUBSIDIARIES. This subchapter applies to a subsidiary of a state
4-41 trust company, a present or former officer, director, manager,
4-42 managing participant, or employee of a subsidiary, or a controlling
4-43 shareholder or other person participating in the affairs of a
4-44 subsidiary in the same manner as the subchapter applies to a state
4-45 trust company, a present or former officer, director, manager,
4-46 managing participant, or employee of a state trust company, or a
4-47 controlling shareholder or other person participating in the
4-48 affairs of a state trust company.

4-49 SECTION 14. Section 202.005, Finance Code, is amended by
4-50 adding Subsection (a-1) to read as follows:

4-51 (a-1) The grounds, procedures, and effects of an
4-52 enforcement proceeding brought under this section apply to a bank
4-53 holding company, an officer, director, or employee of a bank
4-54 holding company, or a controlling shareholder or other person
4-55 participating in the affairs of a bank holding company in the same
4-56 manner as the grounds, procedures, and effects apply to a state
4-57 bank, an officer, director, or employee of a state bank, or a
4-58 controlling shareholder or other person participating in the
4-59 affairs of a state bank.

4-60 SECTION 15. This Act takes effect September 1, 2015.

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