

SUBJECT: Commissioner enforcement of laws governing bank industry misconduct

COMMITTEE: Pensions, Investments, and Financial Services — committee substitute recommended

VOTE: 8 ayes — Truitt, Anchia, C. Anderson, Creighton, Hernandez Luna, Legler, Nash, Orr

0 nays

1 absent — Veasey

WITNESSES: For — Steve Scurlock, Independent Bankers Association; (*Registered, but did not testify*: Celeste Embrey, Texas Bankers Association)

Against — None

On — Charles Cooper, Texas Department of Banking; (*Registered, but did not testify*: Deborah Loomis, Texas Department of Banking)

DIGEST: CSHB 2282 would allow the banking commissioner to remove or prohibit a person from a trust company or any regulated entity, not just a state bank, if the person violated a government-issued cease and desist order or made false entries in a financial institution's records, causing the institution to suffer financial loss at the person's benefit. Other criteria for a removal or prohibition order could include a breach of trust or other fiduciary duty, refusing to submit to examination, or conducting business in an unsafe or unsound manner.

The banking commissioner could make a removal or prohibition order perpetual or effective for a specific time period and could probate the order or impose other conditions. The duration of the removal or prohibition would have to be stated in the order.

A person who was issued a removal or prohibition order could not serve as a director, officer, or employee with financial responsibility of any entity regulated by the commissioner.

Ten years after the order, the person could apply to the commissioner to be released from it, regardless of the order's stated duration, and pay any required fees. The commissioner could approve or deny the application, and the decision would be final and not subject to appeal.

The commissioner could impose an administrative penalty if the person exposed or could have exposed the bank or its depositors, creditors, or shareholders to harm or violated the commissioner's order. The commissioner would have to provide the person with notice identifying corrective action that could be taken to avoid or reduce any penalty.

To determine the administrative penalty, the commissioner would have to consider certain factors, including the good faith of the entity and the circumstances of the case. The bill would increase the penalty for a bank from \$500 for each day of violation to \$500 to \$10,000 for each violation for each day the violation continued, with a maximum penalty of \$500,000 or 1 percent of the bank's assets, whichever was less. A penalty for a person could be \$500 to \$5,000 for each violation for each day the violation continued, with a maximum penalty of \$250,000.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011. The bill would apply only to conduct occurring on or after the effective date.

**SUPPORTERS
SAY:**

CSHB 2282 would enhance the banking commissioner's ability to ensure safety and integrity in the banking industry. Current state and federal laws are insufficient. The state cannot rely on federal regulators to handle these wrongdoings because often they do not pursue what are considered smaller cases. Bankers who do not cooperate and do not respect the law or the enforcement authority of the agency are allowed to move to other institutions and continue their misconduct.

Claims that the commissioner could overreach and pursue removal actions or fines against a banker who made mistakes are unfounded. The bill would impose specific parameters for when action could be taken. The bill's provisions would affect only the bankers causing serious problems and would not affect the vast majority of bankers.

By broadening the scope of conduct that would justify removal or prohibition, the bill would increase the enforcement authority of the

commissioner to handle adequately the individual conduct that jeopardized the integrity of the banking industry.

The bill would provide meaningful enforcement authority to the commissioner by expanding who and under what circumstances could be assessed an administrative penalty. The increased penalties could deter repeat violations, whereas the current penalty of \$500 a day is not a meaningful deterrent.

**OPPONENTS
SAY:**

CSHB 2282 would unnecessarily add regulations to the banking industry. Current state and federal law are sufficient to address issues within the industry. The commissioner could overreach and pursue removal actions or fines against a banker who simply makes some bad decisions or mistakes.

NOTES:

The companion bill, SB 1165 by Carona, passed the Senate by 31-0 on March 29 and was reported favorably, without amendment, by the House Pensions, Investments, and Financial Services Committee on April 28, making it eligible to be considered in lieu of HB 2282.