

# Texas Department of Banking Testimony

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## Testimony Presented to the House Committee on Financial Institutions Testimony on House Bill 1768 on Behalf of the Texas Department of Banking

*Date: March 12, 2001*

Testimony of Randall S. James, Banking Commissioner

### TECHNICAL CORRECTIONS AND REGULATORY IMPROVEMENTS (Finance Commission of Texas and the Texas Department of Banking)

- Administrative Change Highlights
  - Supervisory and Regulatory Issues
1. Administrative Change Highlights
    - Finance Commission member qualification – requires industry-related member to be qualified at time of appointment and at all times thereafter. [Bill Section 1.01]
    - Managerial flexibility – eliminates statutory "Deputy Banking Commissioner" and allows Commissioner to employ deputies with appropriate qualifications for areas of responsibility. [Bill Sections 1.02-1.04, 2.01, 2.02, 2.15, 3.01, 3.03, 3.11, 3.14, 4.01, 5.01]
    - Ability of Department employees to "bank" in Texas – allows employees without discretionary authority to do business with regulated entities; and eliminates the criminal offense for employee indebtedness to or financial interest in a state bank (to permit managing these situations as potential conflicts of interest). [Bill Sections 1.05, 1.06, 2.05, 3.02, 3.05]
    - Conflicts of Interest – Preserves "conflict of interest" treatment for indebtedness or financial interests of employees, but authorizes use of recusal if repayment or divestiture is not readily feasible. The Finance Commission by rule can implement a more detailed conflicts management policy. (As amended, the conflicts provisions will still be more strict than those applicable to any other financial regulatory agency in this state.) [Bill Sections 1.05, 3.02]
    - Needed Corrections and Clarifications – Numerous provisions are amended to clarify original intent of the statutes or correct language to match subsequent legislation, based on our experience over the last few years. [Bill Sections 1.04, 2.01, 2.04, 2.06, 2.08, 2.13, 3.04, 3.06, 3.12, 3.13]
  2. Supervisory and Regulatory Issues
    - Examination frequency – allows examination frequency to be set by Finance Commission rule. Examination frequency should be risk-focused with consideration of federal requirements, and not on a "one size fits all" approach. [Bill Sections 2.03, 3.02]

- Ability to review certain information crucial to examination function – preserves and prevents the waiver of any evidentiary privilege applicable to bank-related information reviewed in an examination. [Bill Sections 2.03, 3.02]
- Involvement of "bad actors" in regulated industry – without Commissioner's prior approval, prohibits involvement in industries regulated by Department of a person removed from a financial institution by an enforcement order of another financial regulatory agency. [Bill Sections 2.10, 2.14, 3.09, 3.10]
- Conformity with federal law – eliminates disparity with federal law regarding certain transactions with affiliates. [Bill Sections 2.11, 2.12]
- Revisions to certain unworkable requirements – eliminates experimental distinction between "submitted" and "accepted" applications that has not worked as intended in practice. Eliminates linkage between ATM statutes and the Currency Exchange Act that does not logically exist. [Bill Sections 2.07, 2.09, 3.07, 3.08]
- Revisions for Committee Substitute – Revised text is offered for Bill Sections 1.01, 1.05, 2.03, 2.05, 2.09, 3.02, 3.05, and 3.08, to address concerns and unintended consequences brought to our attention and to conform these provisions with legislation proposed by the Sunset Advisory Commission