

FINANCE CODE

TITLE 3. FINANCIAL INSTITUTIONS AND BUSINESSES

SUBTITLE A. BANKS

CHAPTER 35. ENFORCEMENT ACTIONS

SUBCHAPTER A. ENFORCEMENT ORDERS: BANKS AND MANAGEMENT

Sec. 35.0001. APPLICABILITY TO BANK SUBSIDIARIES. This subchapter applies to a subsidiary of a state bank, a present or former officer, director, or employee of a subsidiary, or a controlling shareholder or other person participating in the affairs of a subsidiary in the same manner as the subchapter applies to a state bank, a present or former officer, director, or employee of a state bank, or a controlling shareholder or other person participating in the affairs of a state bank.

Added by Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. 3555), Sec. 3, eff. September 1, 2015.

Sec. 35.001. DETERMINATION LETTER. (a) If the banking commissioner determines from examination or other credible evidence that a state bank is in a condition that may warrant the issuance of an enforcement order under this chapter, the banking commissioner may notify the bank in writing of the determination, the requirements the bank must satisfy to abate the determination, and the time in which the requirements must be satisfied to avert further administrative action. The determination letter must be delivered by personal delivery or by registered or certified mail, return receipt requested.

(b) The determination letter may be issued in connection with the issuance of a cease and desist, removal, or prohibition order under this subchapter or an order of supervision or conservatorship under Subchapter B.

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

Sec. 35.002. CEASE AND DESIST ORDER. (a) The banking commissioner has grounds to issue a cease and desist order to a current or former officer, employee, or director of a state bank, or

the bank itself acting through an authorized person, if the banking commissioner determines from examination or other credible evidence that the bank or person directly or indirectly has:

- (1) violated this subtitle or another applicable law;
  - (2) engaged in a breach of trust or other fiduciary duty;
  - (3) refused to submit to examination or examination under oath;
  - (4) conducted business in an unsafe or unsound manner;
- or
- (5) violated a condition of the bank's charter or an agreement between the bank or the person and the banking commissioner or the department.

(b) If the banking commissioner has grounds for action under Subsection (a) and finds that an order to cease and desist from a violation appears to be necessary and in the best interest of the bank involved and its depositors, creditors, and shareholders, the banking commissioner may serve a proposed cease and desist order on the bank and each person who committed or participated in the action. The proposed order must:

- (1) be delivered by personal delivery or by registered or certified mail, return receipt requested;
- (2) state with reasonable certainty the grounds for the proposed order; and
- (3) state the effective date of the order, which may not be before the 21st day after the date the proposed order is delivered or mailed.

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

(c) The order takes effect if the bank or person against whom the proposed order is directed does not request a hearing in writing before the effective date. After taking effect, the order

is final and nonappealable as to that bank or person.

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. 41, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. 3555), Sec. 4, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 989 (H.B. 3574), Sec. 6, eff. June 18, 2023.

Sec. 35.003. REMOVAL OR PROHIBITION ORDER. (a) The banking commissioner has grounds to remove or prohibit a present or former officer, director, or employee of a state bank from office or employment in, or prohibit a controlling shareholder or other person participating in the affairs of a state bank from further participation in the affairs of, a state bank or any other entity chartered, registered, permitted, or licensed by the banking commissioner if the banking commissioner determines from examination or other credible evidence that:

(1) the person:

(A) intentionally committed or participated in the commission of an act described by Section 35.002(a) with regard to the affairs of a financial institution, as defined by Section 201.101;

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

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

(2) because of this action by the person:

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

(B) the interests of the depositors, creditors, or shareholders of the financial institution have been or could be prejudiced; or

(C) the person has received financial gain or

other benefit by reason of the action, or likely would have if the action had not been discovered; and

(3) the action:

(A) involves personal dishonesty on the part of the person; or

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

(b) If the banking commissioner has grounds for action under Subsection (a) and finds that a removal or prohibition order appears to be necessary and in the best interest of the public, the banking commissioner may serve a proposed removal or prohibition order, as appropriate, on a person alleged to have committed or participated in the action. The proposed order must:

(1) be delivered by personal delivery or by registered or certified mail, return receipt requested;

(2) state with reasonable certainty the grounds for removal or prohibition;

(3) state the effective date of the order, which may not be before the 21st day after the date the proposed order is delivered or mailed; and

(4) state the duration of the order, including whether the duration of the order is perpetual.

(b-1) The banking commissioner may make a removal or prohibition order perpetual or effective for a specific period of time, may probate the order, or may impose other conditions on the order.

(c) The order takes effect if the person against whom the proposed order is directed does not request a hearing in writing before the effective date. After taking effect, the order is final and nonappealable as to that person.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.013, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 42, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. 1165), Sec. 1, eff. May 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 9, eff. June 14, 2013.

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

- (1) a sentence was imposed on the person;
- (2) the person received probation or community supervision, including deferred adjudication community supervision; or
- (3) the court deferred final disposition of the person's case.

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

- (1) a bank or other financial institution;
- (2) dishonesty; or
- (3) breach of trust.

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

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

- (1) stayed or terminated by the banking commissioner;
- (2) set aside by the banking commissioner after a hearing; or
- (3) stayed or vacated on appeal.

(e) Not later than the 30th day after the date an order is

served under this section, the person against whom the order is issued may request in writing a hearing before the banking commissioner to show that the person's continued service to a state bank or participation in the affairs of a state bank does not, or is unlikely to, threaten the interests of the depositors, creditors, or shareholders of the state bank or the public confidence in the state bank.

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. [3555](#)), Sec. 5, eff. September 1, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. [614](#)), Sec. 14, eff. September 1, 2019.

Sec. 35.004. HEARING ON PROPOSED ORDER. (a) A requested hearing on a proposed order shall be held not later than the 30th day after the date the first request for a hearing on the order was received by the department unless the parties agree to a later hearing date. Not later than the 11th day before the date of the hearing, each party shall be given written notice by personal delivery or by registered or certified mail, return receipt requested, of the date set by the banking commissioner for the hearing. At the hearing, the department has the burden of proof and each person against whom the proposed order is directed may cross-examine and present evidence to show why the proposed order should not be issued.

(b) After the hearing, the banking commissioner shall issue or decline to issue the proposed order. The proposed order may be

modified as necessary to conform to the findings at the hearing and to require the board to take necessary affirmative action to correct the conditions cited in the order.

(c) An order issued under this section is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections 31.202 and 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. 15, eff. September 1, 2019.

Sec. 35.005. EMERGENCY ORDER. (a) If the banking commissioner believes that immediate action is necessary to prevent immediate and irreparable harm to the bank and its depositors, creditors, and shareholders, the banking commissioner may issue one or more cease and desist, removal, or prohibition orders as emergency orders to become effective immediately on service without prior notice or hearing. Service must be by personal delivery or by registered or certified mail, return receipt requested.

(b) In each emergency order the banking commissioner shall notify the bank and any person against whom the emergency order is directed of:

- (1) the specific conduct requiring the order;
- (2) the citation of each law alleged to have been violated;
- (3) the immediate and irreparable harm alleged to be threatened;
- (4) the duration of the order, including whether the duration of the order is perpetual; and
- (5) the right to a hearing.

(c) Unless a person against whom the emergency order is directed requests a hearing in writing before the 11th day after the date it is served on the person, the emergency order is final and nonappealable as to that person.

(d) A hearing requested under Subsection (c) must be:

- (1) given priority over all other matters pending before the banking commissioner; and

(2) held not later than the 20th day after the date that it is requested unless the parties agree to a later hearing date.

(e) After the hearing, the banking commissioner may affirm, modify, or set aside in whole or part the emergency order. An order affirming or modifying the emergency order is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections [31.202](#) and [31.204](#).

(f) An emergency order continues in effect unless the order is stayed by the banking commissioner. The banking commissioner may impose any condition before granting a stay of the emergency order.

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. 43, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. [1165](#)), Sec. 2, eff. May 28, 2011.

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. [614](#)), Sec. 16, eff. September 1, 2019.

Sec. 35.006. COPY OF LETTER OR ORDER IN BANK RECORDS. A copy of a determination letter, proposed order, emergency order, or final order issued by the banking commissioner under this subchapter shall be immediately brought to the attention of the board of the affected bank, regardless of whether the bank is a party, and filed in the minutes of the board. Each director shall immediately certify to the banking commissioner in writing that the certifying person has read and understood the determination letter, proposed order, emergency order, or final order. The required certification may not be considered an admission of a person in a subsequent legal or administrative proceeding.

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. 44, eff. September 1, 2007.



Sec. 35.007. EFFECT OF FINAL REMOVAL OR PROHIBITION ORDER.

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

(1) serve as a director, officer, or employee of a state bank, state trust company, or holding company of a state bank, or as a director, officer, or employee with financial responsibility of any other entity chartered, registered, permitted, or licensed by the banking commissioner under the laws of this state;

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

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

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

(b) The person subject to the order remains entitled to receive dividends or a share of profits, return of contribution, or other distributive benefit from such an entity with respect to voting securities owned by the person.

(c) If voting securities of an entity identified in Subsection (a)(1) cannot be voted under this section, the voting securities are considered to be authorized but unissued for purposes of determining the procedures for and results of an affected vote.

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

(e) This section and Section 35.008 do not prohibit a removal or prohibition order that has indefinite duration or that by its terms is perpetual.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.014, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 412, Sec. 2.14, eff. Sept. 1, 2001.

Amended by:

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

Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. 1165), Sec. 3, eff. May 28, 2011.

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 6, eff. September 1, 2017.

Sec. 35.0071. APPLICATION FOR RELEASE FROM FINAL REMOVAL OR PROHIBITION ORDER. (a) After the expiration of 10 years from date of issuance, a person who is subject to a prohibition or removal order issued under this subchapter, regardless of the order's stated duration or date of issuance, may apply to the banking commissioner to be released from the order.

(b) The application must be made under oath and in the form required by the banking commissioner. The application must be accompanied by any required fees.

(c) The banking commissioner, in the exercise of discretion, may approve or deny an application filed under this section.

(d) The banking commissioner's decision under Subsection (c) is final and not appealable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. 1165), Sec. 4, eff. May 28, 2011.

Sec. 35.008. LIMITATION ON ACTION. The banking commissioner may not initiate an enforcement action under this subchapter later than the fifth anniversary of the date the banking commissioner discovered or reasonably should have discovered the conduct involved.

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

Sec. 35.009. ENFORCEMENT BY COMMISSIONER. (a) If the banking commissioner reasonably believes that a bank or other person has violated any of the following, the banking commissioner may take any action authorized under Subsection (a-1):

(1) this subtitle or rules enacted under this subtitle and, as a result of that violation, exposed or could have exposed

the bank or the bank's depositors, creditors, or shareholders to harm;

(2) other applicable law of this state and, as a result of that violation, exposed or could have exposed the bank or the bank's depositors, creditors, or shareholders to harm; or

(3) a final order issued by the banking commissioner.

(a-1) The banking commissioner may:

(1) initiate an administrative penalty proceeding against the bank or other person, in accordance with Sections [35.010](#) and [35.011](#);

(2) refer the matter to the attorney general for enforcement by injunction or other available remedy; or

(3) pursue any other action the banking commissioner considers appropriate under applicable law.

(b) If the attorney general prevails in an action brought under Subsection (a-1)(2), the attorney general is entitled to recover reasonable attorney's fees from the bank or person committing the violation.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. [1165](#)), Sec. 5, eff. May 28, 2011.

Sec. 35.010. ADMINISTRATIVE PENALTY. (a) The banking commissioner may initiate a proceeding for an administrative penalty against a bank or other person by serving on the bank or other person, as applicable, notice of the time and place of a hearing on the penalty. The hearing may not be held earlier than the 20th day after the date the notice is served. The notice must:

(1) be served by personal delivery or by registered or certified mail, return receipt requested;

(2) contain a statement of the conduct alleged to constitute a violation; and

(3) if the alleged violation is described by Section [35.009](#)(a)(1) or (2), identify corrective action that the bank or other person must take to avoid or reduce the amount of a penalty that would otherwise be imposed under this section.

(b) In determining the amount of any penalty to be imposed, the banking commissioner shall consider the following factors:

(1) the financial resources of the bank or other person;

(2) the good faith of the bank or other person, including any corrective action taken;

(3) the gravity of the violation;

(4) the history of previous violations;

(5) an offset of the amount of the penalty by the amount of any penalty imposed by another state or federal agency for the same conduct; and

(6) any other matter that justice may require.

(c) If the banking commissioner determines after the hearing that the alleged conduct occurred and that the conduct constitutes a violation, the banking commissioner may impose an administrative penalty against a bank or other person, as applicable, in an amount:

(1) if imposed against a bank, not more than \$10,000 for each violation for each day the violation continues, except that the maximum administrative penalty that may be imposed is the lesser of \$500,000 or one percent of the bank's assets; or

(2) if imposed against a person other than a bank, not more than \$5,000 for each violation for each day the violation continues, except that the maximum administrative penalty that may be imposed is \$250,000.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. [1165](#)), Sec. 6, eff. May 28, 2011.

Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. [1823](#)), Sec. 5, eff. September 1, 2019.

Sec. 35.011. PAYMENT OR APPEAL OF ADMINISTRATIVE PENALTY.

(a) When a penalty order under Section [35.010](#) becomes final, the bank or other person, as applicable, shall pay the penalty or appeal by filing a petition for judicial review.

(b) The petition for judicial review stays the penalty order

during the period preceding the decision of the court. If the court sustains the order, the court shall order the bank or other person, as applicable, to pay the full amount of the penalty or a lower amount determined by the court. If the court does not sustain the order, a penalty is not owed. If the final judgment of the court requires payment of a penalty, interest accrues on the penalty, at the rate charged on loans to depository institutions by the Federal Reserve Bank of New York, beginning on the date the judgment is final and ending on the date the penalty and interest are paid.

(c) If the bank or other person, as applicable, does not pay the penalty imposed under a final and nonappealable penalty order, the banking commissioner shall refer the matter to the attorney general for enforcement. The attorney general is entitled to recover reasonable attorney's fees from the bank or other person, as applicable, if the attorney general prevails in judicial action necessary for collection of the penalty.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. [1165](#)), Sec. 7, eff. May 28, 2011.

Sec. 35.012. CONFIDENTIALITY OF RECORDS. A copy of a notice, correspondence, transcript, pleading, or other document in the records of the department relating to an order issued under this subchapter is confidential and may be released only as provided by Subchapter [D](#), Chapter [31](#), except that the banking commissioner periodically shall publish all final removal and prohibition orders. The banking commissioner may release a final cease and desist order, a final order imposing an administrative penalty, or information regarding the existence of any of those orders to the public if the banking commissioner concludes that the release would enhance effective enforcement of the order.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. [1165](#)), Sec. 8, eff. May 28, 2011.

Sec. 35.013. COLLECTION OF FEES. The department may sue to enforce the collection of a fee owed to the department under a law administered by the department. In the suit a certificate by the banking commissioner showing the delinquency is prima facie evidence of:

(1) the levy of the fee or the delinquency of the stated fee amount; and

(2) compliance by the department with the law relating to the computation and levy of the fee.

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

#### SUBCHAPTER B. SUPERVISION AND CONSERVATORSHIP

Sec. 35.1001. APPLICABILITY TO BANK SUBSIDIARIES. This subchapter applies to a subsidiary of a state bank, a present or former officer, director, or employee of a subsidiary, or a controlling shareholder or other person participating in the affairs of a subsidiary in the same manner as the subchapter applies to a state bank, a present or former officer, director, or employee of a state bank, or a controlling shareholder or other person participating in the affairs of a state bank.

Added by Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. 3555), Sec. 6, eff. September 1, 2015.

Sec. 35.101. ORDER OF SUPERVISION. (a) The banking commissioner by order may appoint a supervisor over a state bank if the banking commissioner determines from examination or other credible evidence that the bank is in hazardous condition and that an order of supervision appears to be necessary and in the best interest of the bank and its depositors, creditors, and shareholders, or the public.

(b) The banking commissioner may issue the order without prior notice.

(c) Subject to Subsection (d), a supervisor serves until the earlier of:

(1) the expiration of the period stated in the order of

supervision; or

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

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

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. 45, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 7, eff. September 1, 2017.

Sec. 35.102. ORDER OF CONSERVATORSHIP. (a) The banking commissioner by order may appoint a conservator for a state bank if the banking commissioner determines from examination or other credible evidence that the bank is in hazardous condition and immediate and irreparable harm is threatened to the bank, its depositors, creditors, or shareholders, or the public.

(b) The banking commissioner may issue the order without prior notice at any time before, during, or after the period of supervision.

(c) An order of conservatorship issued under this section must specifically state the basis for the order.

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. 46, eff. September 1, 2007.

Sec. 35.103. NOTICE AND HEARING. (a) An order issued under Section 35.101 or 35.102 must contain or be accompanied by a notice that, at the request of the bank, a hearing before the banking commissioner will be held at which the bank may cross-examine and present evidence to contest the order or show that the bank has satisfied all requirements for abatement of the order. The department has the burden of proof for any continuation of the order or the issuance of a new order.

(b) To contest or modify the order or demonstrate that the

bank has satisfied all requirements for abatement of the order, the bank must submit to the banking commissioner a written request for a hearing. The request must state the grounds for the request to set aside or modify the order. On receiving a request for hearing, the banking commissioner shall serve notice of the place and time of the hearing, which must be not later than the 10th day after the date the banking commissioner receives the request for a hearing unless the parties agree to a later hearing date. The notice must be delivered by personal delivery or by registered or certified mail, return receipt requested.

(c) The banking commissioner may:

(1) delay a decision for a prompt examination of the bank; and

(2) reopen the record as necessary to allow presentation of the results of the examination and appropriate opportunity for cross-examination and presentation of other relevant evidence.

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

Sec. 35.104. POST-HEARING ORDER. (a) If after the hearing the banking commissioner finds that the bank has been rehabilitated, that its hazardous condition has been remedied, that irreparable harm is no longer threatened, or that the bank should otherwise be released from the order, the banking commissioner shall release the bank from the order, subject to conditions the banking commissioner from the evidence believes are warranted to preserve the safety and soundness of the bank.

(b) If after the hearing the banking commissioner finds that the bank has failed to comply with the lawful requirements of the banking commissioner, has not been rehabilitated, is insolvent, or otherwise continues in hazardous condition, the banking commissioner by order shall:

(1) appoint or reappoint a supervisor under Section [35.101](#);

(2) appoint or reappoint a conservator under Section [35.102](#); or

(3) take other appropriate action authorized by law.



(c) An order issued under Subsection (b) is immediately final for purposes of appeal. The order may be appealed as provided by Sections [31.202](#) and [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. 17, eff. September 1, 2019.

Sec. 35.105. CONFIDENTIALITY OF RECORDS. An order issued under this subchapter and a copy of a notice, correspondence, transcript, pleading, or other document in the records of the department relating to the order are confidential and may be released only as provided by Subchapter D, Chapter [31](#), except that the banking commissioner may release to the public an order or information regarding the existence of an order if the banking commissioner concludes that the release would enhance effective enforcement of the order.

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

Sec. 35.106. AUTHORITY OF SUPERVISOR. During a period of supervision, a bank, without the prior approval of the banking commissioner or the supervisor or as otherwise permitted or restricted by the order of supervision, may not:

(1) dispose of, sell, transfer, convey, or encumber the bank's assets;

(2) lend or invest the bank's money;

(3) incur a debt, obligation, or liability;

(4) pay a cash dividend to the bank's shareholders;

(5) remove an executive officer or director, change the number of executive officers or directors, or have any other change in the position of executive officer or director; or

(6) engage in any other activity determined by the banking commissioner to threaten the safety and soundness of the bank.

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. 47, eff.

September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. [1664](#)), Sec. 10, eff. June 14, 2013.

Acts 2023, 88th Leg., R.S., Ch. 989 (H.B. [3574](#)), Sec. 7, eff. June 18, 2023.

Sec. 35.107. AUTHORITY OF CONSERVATOR. (a) A conservator appointed under this subchapter shall immediately take charge of the bank and all of its property, books, records, and affairs on behalf and at the direction and control of the banking commissioner.

(b) Subject to any limitation in the order of appointment or other direction of the banking commissioner, the conservator has all the powers of the directors, officers, and shareholders of the bank and shall conduct the business of the bank and take all steps the conservator considers appropriate to remove the conditions causing the conservatorship. During the conservatorship, the board may not direct or participate in the affairs of the bank.

(c) Except as otherwise provided by this subchapter, by rules adopted under this subtitle, or by Section [12.106](#), the conservator has the rights and privileges and is subject to the duties, restrictions, penalties, conditions, and limitations of the directors, officers, and employees of state banks.

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. 48, eff. September 1, 2007.

Sec. 35.108. QUALIFICATIONS OF APPOINTEE. The banking commissioner may appoint as a supervisor or conservator any person who in the judgment of the banking commissioner is qualified to serve. The banking commissioner may serve as, or may appoint an employee of the department to serve as, supervisor or conservator.

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

Sec. 35.109. EXPENSES. (a) The banking commissioner shall determine and approve the reasonable expenses attributable to the

service of a supervisor or conservator, including costs incurred by the department and the compensation and expenses of the supervisor or conservator and any professional employees appointed to represent or assist the supervisor or conservator. The banking commissioner or an employee of the department may not receive compensation in addition to salary for serving as supervisor or conservator, but the department may receive reimbursement for the fully allocated personnel cost associated with service of the banking commissioner or an employee of the department as supervisor or conservator.

(b) All approved expenses shall be paid by the bank as the banking commissioner determines. The banking commissioner has a lien against the assets and money of the bank to secure payment of approved expenses. The lien has a higher priority than any other lien against the bank.

(c) Notwithstanding any other provision of this subchapter, the bank may employ an attorney and other persons the bank selects to assist the bank in contesting or satisfying the requirements of an order of supervision or conservatorship. The banking commissioner shall authorize the payment of reasonable fees and expenses from the bank for the attorney and other persons as expenses of the supervision or conservatorship.

(d) The banking commissioner may defer collection of assessment and examination fees by the department from the bank during a period of supervision or conservatorship if deferral would appear to aid prospects for rehabilitation. As a condition of release from supervision or conservatorship, the banking commissioner may require the rehabilitated bank to pay or develop a reasonable plan for payment of deferred fees.

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

Sec. 35.110. REVIEW OF SUPERVISOR OR CONSERVATOR DECISION.

(a) Notwithstanding Section 35.107(b), a majority of the bank's board, acting directly or through counsel who affirmatively represents that the requisite majority has been obtained, may request in writing that the banking commissioner review an action taken or proposed by the supervisor or conservator. The request

must specify why the action would not be in the best interest of the bank. The banking commissioner shall investigate to the extent necessary and make a prompt written ruling on the request. If the action has not yet been taken or if the effect of the action can be postponed, the banking commissioner may stay the action on request pending review.

(b) If a majority of the bank's board objects to the banking commissioner's ruling, the majority may request a hearing before the banking commissioner. The request must be made not later than the 10th day after the date the bank is notified of the ruling.

(c) The banking commissioner shall give the board notice of the time and place of the hearing by personal delivery or by registered or certified mail, return receipt requested. The hearing may not be held later than the 10th day after the date the banking commissioner receives the request for a hearing unless the parties agree to a later hearing date. At the hearing the board has the burden of proof to demonstrate that the action is not in the best interest of the bank.

(d) After the hearing, the banking commissioner may affirm, modify, or set aside in whole or part the prior ruling. An order supporting the action contested by the board is immediately final for purposes of appeal. The order may be appealed as provided by Sections [31.202](#) and [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. 18, eff. September 1, 2019.

Sec. 35.111. VENUE. (a) A suit filed against a bank while the bank is under conservatorship, or against a person in connection with an action taken or decision made by that person as a supervisor or conservator of a bank, must be brought in Travis County regardless of whether the bank remains under supervision or conservatorship.

(b) A conservator may sue a person on the bank's behalf to preserve, protect, or recover a bank asset, including a claim or cause of action. Venue is in:

- (1) Travis County; or
- (2) another location provided by law.

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

Sec. 35.112. DURATION. A supervisor or conservator serves for the period necessary to accomplish the purposes of the supervision or conservatorship as intended by this subchapter. A rehabilitated bank shall be returned to its former or new management under conditions reasonable and necessary to prevent recurrence of the conditions causing the supervision or conservatorship.

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

Sec. 35.113. ADMINISTRATIVE ELECTION OF REMEDIES. The banking commissioner may take any action authorized by Chapter 36 regardless of the existence of supervision or conservatorship. A period of supervision or conservatorship is not required before a bank is closed for liquidation or other remedial action is taken.

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

Sec. 35.114. RELEASE BEFORE HEARING. This subchapter does not prevent release of the bank from supervision or conservatorship before a hearing if the banking commissioner is satisfied that requirements for abatement have been adequately satisfied.

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

#### SUBCHAPTER C. UNAUTHORIZED ACTIVITY: INVESTIGATION AND ENFORCEMENT

Sec. 35.201. INAPPLICABILITY. This subchapter does not apply to a financial institution, as that term is defined by Section 201.101, that lawfully maintains its main office or a branch in this state.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.015, eff. Sept. 1, 1999.

Sec. 35.202. INVESTIGATION OF UNAUTHORIZED ACTIVITY. (a)

If the banking commissioner has reason to believe that a person has engaged, is engaging, or is likely to engage in an unauthorized activity, the banking commissioner may:

(1) investigate as necessary within or outside this state to:

(A) determine whether the unauthorized activity has occurred or is likely to occur; or

(B) aid in the enforcement of the laws administered by the banking commissioner;

(2) initiate appropriate disciplinary action as provided by this subchapter; and

(3) report unauthorized activity to a law enforcement agency or another regulatory agency with appropriate jurisdiction.

(b) The banking commissioner may:

(1) on written request furnish to a law enforcement agency evidence the banking commissioner has compiled in connection with the unauthorized activity, including materials, documents, reports, and complaints; and

(2) assist the law enforcement agency or other regulatory agency as requested.

(c) A person acting without malice, fraudulent intent, or bad faith is not subject to liability, including liability for libel, slander, or another relevant tort, because the person files a report or furnishes, orally or in writing, information concerning a suspected, anticipated, or completed unauthorized activity to a law enforcement agency, the banking commissioner, another regulatory agency with appropriate jurisdiction, or an agent or employee of a law enforcement agency, the banking commissioner, or other regulatory agency. The person is entitled to attorney's fees and court costs if the person prevails in an action for libel, slander, or another relevant tort based on the report or other information the person furnished as provided by this subchapter.

(d) This section does not:

(1) affect a common law or statutory privilege or immunity;

(2) preempt the authority or relieve the duty of a law enforcement agency or other regulatory agency with appropriate

jurisdiction to investigate and prosecute suspected criminal acts;

(3) prohibit a person from voluntarily disclosing information to a law enforcement agency or other regulatory agency; or

(4) limit a power or duty granted to the banking commissioner under this subtitle or other law.

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

Sec. 35.203. SUBPOENA AUTHORITY. (a) This section applies only to an investigation of an unauthorized activity as provided by Section 35.202 and does not affect the conduct of a contested case under Chapter 2001, Government Code.

(b) The banking commissioner may issue a subpoena to compel the attendance and testimony of a witness or the production of a book, account, record, paper, or correspondence relating to a matter that the banking commissioner has authority to consider or investigate at the department's offices in Austin or at another place the banking commissioner designates.

(c) The subpoena must be signed and issued by the banking commissioner or a deputy banking commissioner.

(d) A person who is required by subpoena to attend a proceeding before the banking commissioner is entitled to receive:

(1) reimbursement for mileage, in the amount provided for travel by a state employee, for traveling to or returning from a proceeding that is more than 25 miles from the witness's residence; and

(2) a fee for each day or part of a day the witness is necessarily present as a witness in an amount equal to the per diem travel allowance of a state employee.

(e) The banking commissioner may serve the subpoena or have it served by an authorized agent of the banking commissioner, a sheriff, or a constable. The sheriff's or constable's fee for serving the subpoena is the same as the fee paid the sheriff or constable for similar services.

(f) A person possessing materials located outside this state that are requested by the banking commissioner may make the materials available to the banking commissioner or a representative

of the banking commissioner for examination at the place where the materials are located. The banking commissioner may:

(1) designate a representative, including an official of the state in which the materials are located, to examine the materials; and

(2) respond to a similar request from an official of another state, the United States, or a foreign country.

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

(h) Except to the extent disclosure is necessary to locate and produce responsive records or obtain legal representation and subject to Subsection (i), 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.

(i) A subpoena issued under this section may prohibit the disclosure of information described by Subsection (h) 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. 2.15, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 6.103(b), eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. 1823), Sec. 6, eff. September 1, 2019.

Sec. 35.204. ENFORCEMENT OF SUBPOENA. (a) If necessary,



the banking commissioner may apply to a district court of Travis County or of the county in which the subpoena was served for enforcement of the subpoena, and the court may issue an order compelling compliance.

(b) If the court orders compliance with the subpoena or finds the person in contempt for failure to obey the order, the banking commissioner, or the attorney general if representing the banking commissioner, may recover reasonable court costs, attorney's fees, and investigative costs incurred in the proceeding.

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

Sec. 35.205. CONFIDENTIALITY OF SUBPOENAED RECORDS. (a) A book, account, record, paper, correspondence, or other document subpoenaed and produced under Section 35.203 that is otherwise made privileged or confidential by law remains privileged or confidential unless admitted into evidence at an administrative hearing or in a court. The banking commissioner may issue an order protecting the confidentiality or privilege of the document and restricting its use or distribution by any person or in any proceeding, other than a proceeding before the banking commissioner.

(b) Subject to Subchapter D, Chapter 31, and confidentiality provisions of other law administered by the banking commissioner, information or material acquired under Section 35.203 under a subpoena is not a public record for the period the banking commissioner considers reasonably necessary to complete the investigation, to protect the person being investigated from unwarranted injury, or to serve the public interest. The information or material is not subject to a subpoena, except a grand jury subpoena, until released for public inspection by the banking commissioner or until, after notice and a hearing, a district court determines that the public interest and any investigation by the banking commissioner would not be jeopardized by obeying the subpoena. The district court order may not apply to:

(1) a record or communication received from another law enforcement or regulatory agency except on compliance with the

confidentiality laws governing the records of the other agency; or  
(2) an internal note, memorandum, report, or communication made in connection with a matter that the banking commissioner has the authority to consider or investigate, except on good cause and in compliance with applicable confidentiality laws.

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

Sec. 35.206. EVIDENCE. (a) On certification by the banking commissioner, a book, record, paper, or document produced or testimony taken as provided by Section 35.203 and held by the department is admissible as evidence in any case without prior proof of its correctness and without other proof. The certified book, record, document, or paper, or a certified copy, is prima facie evidence of the facts it contains.

(b) This section does not limit another provision of this subtitle or a law that provides for the admission of evidence or its evidentiary value.

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. 8, eff. September 1, 2017.

Sec. 35.207. CEASE AND DESIST ORDER. (a) The banking commissioner may serve a proposed cease and desist order on a person that the banking commissioner believes is engaging or is likely to engage in an unauthorized activity. The order must:

(1) be delivered by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;

(2) state each act or practice alleged to be an unauthorized activity; and

(3) state the effective date of the order, which may not be before the 21st day after the date the proposed order is delivered or mailed.

(b) Unless the person against whom the proposed order is directed requests a hearing in writing before the effective date of

the proposed order, the order takes effect and is final and nonappealable as to that person.

(c) A requested hearing on a proposed order shall be held not later than the 30th day after the date the first written request for a hearing on the order is received by the department unless the parties agree to a later hearing date. At the hearing, the department has the burden of proof and must present evidence in support of the order. Each person against whom the order is directed may cross-examine and show cause why the order should not be issued.

(d) After the hearing, the banking commissioner shall issue or decline to issue a cease and desist order. The proposed order may be modified as necessary to conform to the findings at the hearing. An order issued under this subsection:

(1) is immediately final for purposes of enforcement and appeal; and

(2) must require the person to immediately cease and desist from the unauthorized activity.

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

Sec. 35.208. EMERGENCY CEASE AND DESIST ORDER. (a) The banking commissioner may issue an emergency cease and desist order to a person whom the banking commissioner reasonably believes is engaging in a continuing unauthorized activity that is fraudulent or threatens immediate and irreparable public harm.

(b) The order must:

(1) be delivered on issuance to each person affected by the order by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;

(2) state the specific charges and require the person immediately to cease and desist from the unauthorized activity; and

(3) contain a notice that a request for hearing may be filed under this section.

(c) Unless a person against whom the order is directed requests a hearing in writing before the 11th day after the date it is served on the person, the emergency order is final and

nonappealable as to that person. A request for a hearing must:

(1) be in writing and directed to the banking commissioner; and

(2) state the grounds for the request to set aside or modify the order.

(d) On receiving a request for a hearing, the banking commissioner shall serve notice of the time and place of the hearing by personal delivery or registered or certified mail, return receipt requested. The hearing must be held not later than the 10th day after the date the banking commissioner receives the request for a hearing unless the parties agree to a later hearing date. At the hearing, the department has the burden of proof and must present evidence in support of the order. The person requesting the hearing may cross-examine witnesses and show cause why the order should not be affirmed.

(e) After the hearing, the banking commissioner shall affirm, modify, or set aside in whole or part the emergency cease and desist order. An order affirming or modifying the emergency cease and desist order is immediately final for purposes of enforcement and appeal.

(f) An order continues in effect unless the order is stayed by the banking commissioner. The banking commissioner may impose any condition before granting a stay of the order.

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

Sec. 35.209. JUDICIAL REVIEW OF CEASE AND DESIST ORDER. (a) A person affected by a cease and desist order issued, affirmed, or modified after a hearing may file a petition for judicial review.

(b) A filed petition for judicial review does not stay or vacate the order unless the court, after hearing, specifically stays or vacates the order.

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

Sec. 35.210. VIOLATION OF FINAL CEASE AND DESIST ORDER. (a) If the banking commissioner reasonably believes that a person has violated a final and enforceable cease and desist order, the banking commissioner may:

(1) initiate an administrative penalty proceeding under Section 35.211;

(2) refer the matter to the attorney general for enforcement by injunction and any other available remedy; or

(3) pursue any other action the banking commissioner considers appropriate under applicable law.

(b) If the attorney general prevails in an action brought under Subsection (a)(2), the attorney general is entitled to reasonable attorney's fees.

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

Sec. 35.211. ADMINISTRATIVE PENALTY. (a) The banking commissioner may initiate an action for an administrative penalty against a person for violation of a cease and desist order by serving on the person notice of the time and place of a hearing on the penalty. The notice must be delivered by personal delivery or certified mail, return receipt requested, to the person's last known address. The hearing may not be held earlier than the 20th day after the date the notice is served. The notice must contain a statement of the facts or conduct alleged to violate the cease and desist order.

(b) In determining whether a cease and desist order has been violated, the banking commissioner shall consider the maintenance of procedures reasonably adopted to ensure compliance with the order.

(c) If the banking commissioner after the hearing determines that a cease and desist order has been violated, the banking commissioner may:

(1) impose an administrative penalty in an amount not to exceed \$25,000 for each discrete unauthorized act;

(2) direct the person against whom the order was issued to make complete restitution, in the form and amount and within the period determined by the banking commissioner, to each resident of this state and entity operating in this state damaged by the violation; or

(3) both impose the penalty and direct restitution.

(d) In determining the amount of the penalty and whether to

impose restitution, the banking commissioner shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act;
- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter future violations;
- (5) efforts to correct the violation;
- (6) whether the violation was intentional or unintentional;
- (7) the financial ability of the person against whom the penalty is to be assessed; and
- (8) any other matter that justice may require.

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

Sec. 35.212. PAYMENT AND APPEAL OF ADMINISTRATIVE PENALTY.

(a) When an administrative penalty order under Section 35.211 becomes final, a person affected by the order, within the time permitted by law for appeal, shall:

- (1) pay the amount of the penalty;
- (2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or
- (3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the time permitted by law for appeal, a person who acts under Subsection (a)(3) may:

- (1) stay enforcement of the penalty by:
  - (A) paying the amount of the penalty to the court for placement in an escrow account; or
  - (B) giving the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or
- (2) request the court to stay enforcement of the penalty by:
  - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the

amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the banking commissioner by certified mail.

(c) Not later than the fifth day after the date the banking commissioner receives a copy of an affidavit under Subsection (b)(2), the banking commissioner may file with the court a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(d) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the banking commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

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

Sec. 35.213. JUDICIAL REVIEW OF ADMINISTRATIVE PENALTY.

(a) If on judicial review the court sustains the penalty order, the court shall order the person to pay the full amount of the penalty or a lower amount determined by the court. If the court does not sustain the order, a penalty is not owed.

(b) When the judgment of the court becomes final, if the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest computed at the annual rate of 10 percent be remitted by the department. The interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount owed.

(c) If the judgment of the court requires payment of a

penalty that has not previously been paid, the court shall order as part of its judgment that interest accrues on the penalty at the annual rate of 10 percent, beginning on the date the judgment is final and ending on the date the penalty and interest are paid.

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