

FINANCE CODE

TITLE 3. FINANCIAL INSTITUTIONS AND BUSINESSES

SUBTITLE A. BANKS

CHAPTER 59. MISCELLANEOUS PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 59.001. DEFINITIONS. In this subchapter:

(1) "Civil action" means a civil proceeding pending in a tribunal. The term does not include an examination or enforcement proceeding initiated by:

(A) a governmental agency with primary regulatory jurisdiction over a financial institution in possession of a compliance review document;

(B) the Federal Deposit Insurance Corporation or its successor; or

(C) the board of governors of the Federal Reserve System or its successor.

(2) "Claim against a customer" means a writ of attachment, writ of garnishment, notice of freeze, notice of levy, notice of child support lien, notice of seizure, notice of receivership, restraining order, injunction or other instrument served on or delivered to a financial institution and purporting to assert, establish, or perfect any interest in or claim against an account, extension of credit, or product of the financial institution held or established by the financial institution in the name of the customer or for the benefit of the customer, or in the name of the financial institution as the fiduciary, agent, or custodian or in another representative capacity for the customer. The term does not include citation or other process in a civil suit in which the financial institution is made a defendant and against which claims for affirmative relief are asserted, even though the subject matter of the suit is an account, extension of credit, or product of the financial institution held or established by the financial institution in the name of a customer or in the name of the financial institution as the fiduciary, agent, or custodian or in another representative capacity for the customer.

(3) "Compliance review document" means a document prepared by or for a compliance review committee acting pursuant to Section 59.009.

(4) "Customer" means a person who uses, purchases, or obtains an account, extension of credit, or product of a financial institution or for whom a financial institution acts as a fiduciary, agent, or custodian or in another representative capacity.

(5) "Financial institution" has the meaning assigned by Section 201.101, except that the term does not include a financial institution organized under the laws of another state or organized under federal law with its main office in another state that does not maintain a branch or other office in this state.

(6) "Out-of-state financial institution" means a financial institution, organized under the laws of another state or organized under federal law with its main office in another state, that has a branch or other office in this state.

(7) "Record" means financial or other information of a customer maintained by a financial institution.

(8) "Record request" means a valid and enforceable subpoena, request for production, or other instrument issued under authority of a tribunal that compels production of a customer record.

(9) "Texas financial institution" means a financial institution organized under the laws of this state or organized under federal law with its main office in this state.

(10) "Tribunal" means a court or other adjudicatory tribunal with jurisdiction to issue a request for records, including a government agency exercising adjudicatory functions and an alternative dispute resolution mechanism, voluntary or required, under which a party may compel the production of records. Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.016, eff. Sept. 1, 1999.

Sec. 59.002. SLANDER OR LIBEL OF BANK. (a) A person commits an offense if the person:

(1) knowingly makes, circulates, or transmits to

another person an untrue statement that is derogatory to the financial condition of a bank located in this state; or

(2) with intent to injure a bank located in this state, counsels, aids, procures, or induces another person to knowingly make, circulate, or transmit to another person an untrue statement that is derogatory to the financial condition of any bank located in this state.

(b) An offense under this section is a state jail felony. Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.016, eff. Sept. 1, 1999.

Sec. 59.003. AUTHORITY OF NOTARY PUBLIC. A notary public is not disqualified from taking an acknowledgment or proof of a written instrument as provided by Section 406.016, Government Code, solely because of the person's ownership of stock or a participation interest in or employment by a financial institution that is an interested party to the underlying transaction. Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.016, eff. Sept. 1, 1999.

Sec. 59.004. SUCCESSION OF TRUST POWERS. (a) If, at the time of a merger, reorganization, conversion, sale of substantially all of its assets under Chapter 32 or other applicable law, or sale of substantially all of its trust accounts and related activities at a separate branch or other office, a reorganizing or selling financial institution is acting as trustee, guardian, executor, or administrator, or in another fiduciary capacity, a successor or purchasing financial institution with sufficient fiduciary authority may continue the office, trust, or fiduciary relationship:

(1) without the necessity of judicial action or action by the creator of the office, trust, or fiduciary relationship; and

(2) without regard to whether the successor or purchasing financial institution meets qualification requirements specified in an instrument creating the office, trust, or fiduciary relationship other than a requirement related to geographic locale of account administration, including requirements as to

jurisdiction of incorporation, location of principal office, or type of financial institution.

(b) The successor or purchasing financial institution may perform all the duties and exercise all the powers connected with or incidental to the fiduciary relationship in the same manner as if the successor or purchasing financial institution had been originally designated as the fiduciary.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.016, eff. Sept. 1, 1999.

Sec. 59.005. AGENCY ACTIVITIES. (a) A financial institution may receive deposits, renew time deposits, close loans, service loans, receive payments on loans and other obligations, and perform other services as an agent for another financial institution under a written agency agreement.

(b) A financial institution may not under an agency agreement:

(1) conduct an activity as agent that it would be prohibited from conducting as a principal under applicable state or federal law; or

(2) have an agent conduct an activity that the bank as principal would be prohibited from conducting under applicable state or federal law.

(c) The banking commissioner may order a state bank or another financial institution subject to the banking commissioner's enforcement powers to cease acting as an agent or principal under an agency agreement in a manner that the banking commissioner finds to be inconsistent with safe and sound banking practices or governing law.

(d) Notwithstanding another law, a financial institution acting as an agent for another financial institution in accordance with this section is not considered to be a branch of the institution acting as principal.

(e) This section does not affect:

(1) authority under another law for a financial institution to act as an agent on behalf of another person or to act as a principal in employing another person as agent; or

(2) whether an agent's activities on behalf of a financial institution under another law would cause the agent to be considered a branch of the financial institution.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.016, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 528, Sec. 14, eff. Sept. 1, 2001.

Sec. 59.006. DISCOVERY OF CUSTOMER RECORDS. (a) This section provides the exclusive method for compelled discovery of a record of a financial institution relating to one or more customers but does not create a right of privacy in a record. This section does not apply to and does not require or authorize a financial institution to give a customer notice of:

(1) a demand or inquiry from a state or federal government agency authorized by law to conduct an examination of the financial institution;

(2) a record request from a state or federal government agency or instrumentality under statutory or administrative authority that provides for, or is accompanied by, a specific mechanism for discovery and protection of a customer record of a financial institution, including a record request from a federal agency subject to the Right to Financial Privacy Act of 1978 (12 U.S.C. Section 3401 et seq.), as amended, or from the Internal Revenue Service under Section 1205, Internal Revenue Code of 1986;

(3) a record request from or report to a government agency arising out of:

(A) the investigation or prosecution of a criminal offense;

(B) the investigation of alleged abuse, neglect, or exploitation of an elderly or disabled person in accordance with Chapter 48, Human Resources Code; or

(C) the assessment for or provision of guardianship services under Subchapter E, Chapter 161, Human Resources Code;

(4) a record request in connection with a garnishment proceeding in which the financial institution is garnishee and the

customer is debtor;

(5) a record request by a duly appointed receiver for the customer;

(6) an investigative demand or inquiry from a state legislative investigating committee;

(7) an investigative demand or inquiry from the attorney general of this state as authorized by law other than the procedural law governing discovery in civil cases;

(8) the voluntary use or disclosure of a record by a financial institution subject to other applicable state or federal law; or

(9) a record request in connection with an investigation conducted under Section [1054.151](#), [1054.152](#), or [1102.001](#), Estates Code.

(b) A financial institution shall produce a record in response to a record request only if:

(1) it is served with the record request not later than the 24th day before the date that compliance with the record request is required;

(2) before the financial institution complies with the record request the requesting party pays the financial institution's reasonable costs of complying with the record request, including costs of reproduction, postage, research, delivery, and attorney's fees, or posts a cost bond in an amount estimated by the financial institution to cover those costs; and

(3) if the customer is not a party to the proceeding in which the request was issued, the requesting party complies with Subsections (c) and (d) and:

(A) the financial institution receives the customer's written consent to release the record after a request under Subsection (c)(3); or

(B) the tribunal takes further action based on action initiated by the requesting party under Subsection (d).

(b-1) If the requesting party has not paid a financial institution's costs or posted a cost bond as required by Subsection (b)(2), a court may not:

(1) order the financial institution to produce a

record in response to the record request; or

(2) find the financial institution to be in contempt of court for failing to produce the record.

(c) If the affected customer is not a party to the proceeding in which the record request was issued, in addition to serving the financial institution with a record request, the requesting party shall:

(1) give notice stating the rights of the customer under Subsection (e) and a copy of the request to each affected customer in the manner and within the time provided by Rule 21a, Texas Rules of Civil Procedure;

(2) file a certificate of service indicating that the customer has been mailed or served with the notice and a copy of the record request as required by this subsection with the tribunal and the financial institution; and

(3) request the customer's written consent authorizing the financial institution to comply with the request.

(d) If the customer that is not a party to the proceeding does not execute the written consent requested under Subsection (c)(3) on or before the date that compliance with the request is required, the requesting party may by written motion seek an in camera inspection of the requested record as its sole means of obtaining access to the requested record. In response to a motion for in camera inspection, the tribunal may inspect the requested record to determine its relevance to the matter before the tribunal. The tribunal may order redaction of portions of the records that the tribunal determines should not be produced and shall enter a protective order preventing the record that it orders produced from being:

(1) disclosed to a person who is not a party to the proceeding before the tribunal; and

(2) used by a person for any purpose other than resolving the dispute before the tribunal.

(e) A customer that is a party to the proceeding bears the burden of preventing or limiting the financial institution's compliance with a record request subject to this section by seeking an appropriate remedy, including filing a motion to quash the

record request or a motion for a protective order. Any motion filed shall be served on the financial institution and the requesting party before the date that compliance with the request is required. A financial institution is not liable to its customer or another person for disclosure of a record in compliance with this section.

(f) A financial institution may not be required to produce a record under this section before the later of:

(1) the 24th day after the date of receipt of the record request as provided by Subsection (b)(1);

(2) the 15th day after the date of receipt of a customer consent to disclose a record as provided by Subsection (b)(3); or

(3) the 15th day after the date a court orders production of a record after an in camera inspection of a requested record as provided by Subsection (d).

(g) An order to quash or for protection or other remedy entered or denied by the tribunal under Subsection (d) or (e) is not a final order and an interlocutory appeal may not be taken.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.016, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 528, Sec. 15, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. [221](#)), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 780 (S.B. [1235](#)), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 230 (H.B. [2394](#)), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1031 (H.B. [1438](#)), Sec. 31, eff. September 1, 2015.

Sec. 59.007. ATTACHMENT, INJUNCTION, EXECUTION, OR GARNISHMENT. (a) An attachment, injunction, execution, or writ of garnishment may not be issued against or served on a financial institution that has its principal office or a branch in this state to collect a money judgment or secure a prospective money judgment against the financial institution before the judgment is final and

all appeals have been foreclosed by law.

(b) An attachment, injunction, execution, or writ of garnishment issued to or served on a financial institution for the purpose of collecting a money judgment or securing a prospective money judgment against a customer of the financial institution is governed by Section 59.008 and not this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.016, eff. Sept. 1, 1999.

Sec. 59.008. CLAIMS AGAINST CUSTOMERS OF FINANCIAL INSTITUTIONS. (a) A claim against a customer of a financial institution shall be delivered or served as otherwise required or permitted by law at the address designated as the address of the registered agent of the financial institution in a registration filed with the secretary of state pursuant to Section 201.102, with respect to an out-of-state financial institution, or Section 201.103, with respect to a Texas financial institution.

(b) If a financial institution files a registration statement with the secretary of state pursuant to Section 201.102, with respect to an out-of-state financial institution, or Section 201.103, with respect to a Texas financial institution, a claim against a customer of the financial institution is not effective as to the financial institution if the claim is served or delivered to an address other than that designated by the financial institution in the registration as the address of the financial institution's registered agent.

(c) The customer bears the burden of preventing or limiting a financial institution's compliance with or response to a claim subject to this section by seeking an appropriate remedy, including a restraining order, injunction, protective order, or other remedy, to prevent or suspend the financial institution's response to a claim against the customer.

(d) A financial institution that does not file a registration with the secretary of state pursuant to Section 201.102, with respect to an out-of-state financial institution, or Section 201.103, with respect to a Texas financial institution, is subject to service or delivery of all claims against customers of

the financial institution as otherwise provided by law.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 2.016, eff. Sept. 1, 1999.

Sec. 59.009. COMPLIANCE REVIEW COMMITTEE. (a) A financial institution or an affiliate of a financial institution, including its holding company, may establish a compliance review committee to test, review, or evaluate the financial institution's conduct, transactions, or potential transactions for the purpose of monitoring and improving or enforcing compliance with:

- (1) a statutory or regulatory requirement;
- (2) financial reporting to a governmental agency;
- (3) the policies and procedures of the financial institution or its affiliates; or
- (4) safe, sound, and fair lending practices.

(b) Except as provided by Subsection (c):

(1) a compliance review document is confidential and is not discoverable or admissible in evidence in a civil action;

(2) an individual serving on a compliance review committee or acting under the direction of a compliance review committee may not be required to testify in a civil action as to:

(A) the contents or conclusions of a compliance review document; or

(B) an action taken or discussions conducted by or for a compliance review committee; and

(3) a compliance review document or an action taken or discussion conducted by or for a compliance review committee that is disclosed to a governmental agency remains confidential and is not discoverable or admissible in a civil action.

(c) Subsection (b)(2) does not apply to an individual who has management responsibility for the operations, records, employees, or activities being examined or evaluated by the compliance review committee.

(d) This section does not limit the discovery or admissibility in a civil action of a document that is not a compliance review document.

Renumbered from Sec. 59.007 and amended by Acts 1999, 76th Leg., ch.

Sec. 59.010. CONFIDENTIALITY OF ADMINISTRATIVE SUBPOENA.

(a) Except to the extent disclosure is necessary to locate and produce responsive records, an administrative subpoena that meets the requirements of Subsection (b) and is served on a financial institution may provide that the financial institution to whom the subpoena is directed may not:

- (1) disclose that the subpoena has been issued;
- (2) identify or describe any records requested in the subpoena; or
- (3) disclose whether records have been furnished in response to the subpoena.

(b) The government agency issuing the subpoena may prohibit the disclosure of information described in Subsection (a) only if the agency finds, and the subpoena states the agency's finding that:

- (1) the records relate to an ongoing criminal investigation by the agency; and
- (2) the disclosure could significantly impede or jeopardize the investigation.

(c) For purposes of this section, "administrative subpoena" means a valid and enforceable subpoena requesting customer records, issued under the laws of this state by a government agency exercising investigatory or adjudicative functions with respect to a matter within the agency's jurisdiction.

Added by Acts 2001, 77th Leg., ch. 528, Sec. 16, eff. Sept. 1, 2001.

Sec. 59.011. LENDER LIABILITY FOR CONSTRUCTION. (a) For purposes of Chapter 27, Property Code, a federally insured financial institution regulated under this code is not a builder.

(b) A lender regulated by this code that forecloses on or otherwise acquires a home through the foreclosure process or other legal means when the loan is in default is not liable to a subsequent purchaser for any construction defects of which the lender had no knowledge that were created prior to the acquisition of the home by the lender.

(c) A builder hired by a lender to complete the construction of a foreclosed home is not liable for any construction defects of which the builder had no knowledge that existed prior to the acquisition of the home by the lender, but the builder is subject to Chapter 27, Property Code, for work performed for the lender subsequent to the acquisition of the home by the lender.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.01, eff. September 1, 2005.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 9.002, eff. September 1, 2023.

Sec. 59.012. LOANS FOR DEVELOPMENTS THAT USE HARVESTED RAINWATER. Financial institutions may consider making loans for developments that will use harvested rainwater as the sole source of water supply.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1311 (H.B. 3391), Sec. 1, eff. September 1, 2011.

SUBCHAPTER B. SAFE DEPOSIT BOXES

Sec. 59.101. DEFINITION. In this subchapter, "safe deposit company" means a person who maintains and rents safe deposit boxes. Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.102. AUTHORITY TO ACT AS SAFE DEPOSIT COMPANY. Any person may be a safe deposit company. Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.103. RELATIONSHIP OF SAFE DEPOSIT COMPANY AND RENTER. In a safe deposit transaction the relationship of the safe deposit company and the renter is that of lessor and lessee and landlord and tenant, and the rights and liabilities of the safe deposit company are governed accordingly in the absence of a contract or statute to the contrary. The lessee is considered for all purposes to be in possession of the box and its contents. Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.104. DELIVERY OF NOTICE. A notice required by this subchapter to be given to a lessee of a safe deposit box must be in writing and personally delivered or sent by registered or certified mail, return receipt requested, to each lessee at the most recent address of the person according to the records of the safe deposit company.

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

Sec. 59.105. EFFECT OF SUBCHAPTER ON OTHER LAW. This subchapter does not affect Chapter 151, Estates Code, or another statute of this state governing safe deposit boxes.

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

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 20.010, eff. September 1, 2015.

Sec. 59.106. ACCESS BY MORE THAN ONE PERSON. (a) If a safe deposit box is leased in the name of two or more persons jointly or if a person other than the lessee is designated in the lease agreement as having a right of access to the box, each of those persons is entitled to have access to the box and to remove its contents in the absence of a contract to the contrary. This right of access and removal is not affected by the death or incapacity of another person who is a lessee or otherwise entitled to have access to the box.

(b) A safe deposit company is not responsible for damage arising from access to a safe deposit box or removal of any of its contents by a person with a right of access to the box.

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

Sec. 59.107. NONEMERGENCY OPENING AND RELOCATION. (a) A safe deposit company may not relocate a safe deposit box rented for a term of at least six months if the box rental is not delinquent or open a safe deposit box to relocate its contents to another safe deposit box or other location except:

- (1) in the presence of the lessee;

- (2) with the lessee's written authorization; or
- (3) as otherwise provided by this section or Section

59.108.

(b) A safe deposit box may not be relocated under this section unless the storage conditions at the new location are at least as secure as the conditions at the original box location.

(c) Not later than the 30th day before the scheduled date of a nonemergency relocation, the safe deposit company shall give notice of the relocation to each lessee of the safe deposit box. The notice must state the scheduled date and time of the relocation and whether the box will be opened during the relocation.

(d) A lessee may personally supervise the relocation or authorize the relocation in writing if notice is given to each lessee.

(e) If during the relocation the box is opened and a lessee does not personally supervise the relocation or has not authorized the relocation in writing, two employees, at least one of whom is an officer or manager of the safe deposit company and at least one of whom is a notary public, shall inventory the contents of the box in detail. The safe deposit company shall notify each lessee of the new box number or location not later than the 30th day after the date of the relocation and shall include a signed and notarized copy of the inventory report. The cost of a certified mailing other than the first notice sent in connection with each relocation may be treated as box rental due at the expiration of the rental term.

(f) This section does not apply to a relocation of a safe deposit box within the same building.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.30, eff. Sept. 1, 1999.

Sec. 59.108. EMERGENCY OPENING AND RELOCATION. (a) A safe deposit company may relocate a safe deposit box or open the box to relocate its contents to another box or location without complying with Sections 59.107(a)-(d) if the security of the original box is threatened or destroyed by natural disaster, including tornado, flood, fire, or other unforeseeable circumstances beyond the control of the safe deposit company.

(b) The safe deposit company shall follow the procedure provided by Section 59.107(e), except that the notice of the new box number or location must be given not later than the 90th day after the date of a relocation under this section.

(c) This section does not apply to a relocation of a safe deposit box within the same building.

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

Sec. 59.109. TERMINATION OF RENTAL; LIEN; SALE OF CONTENTS.

(a) A safe deposit company may not terminate an agreement for the rental of a safe deposit box unless:

(1) the safe deposit company has delivered or sent to the lessee a notice not later than the 90th day before the date of the termination and has provided the lessee an opportunity to retrieve the contents during normal business hours throughout the duration of the notice period; or

(2) the payment for the rental of a safe deposit box is delinquent for at least six months, and the lessee fails to pay the rent due following notice provided under Subsection (a-1).

(a-1) If the payment for the rental of a safe deposit box is delinquent for at least six months, or if the rental agreement is otherwise terminated, the safe deposit company shall send notice to each lessee that the company will remove the contents of the box if the rent is not paid or, if the rental agreement is otherwise terminated, the contents are not retrieved before the date specified in the notice, which may not be earlier than the 60th day after the date the notice is delivered or sent.

(a-2) If the delinquent rent is not paid or, if the rental agreement is otherwise terminated, the contents are not retrieved before the date specified in the notice, the safe deposit company may open the box in the presence of two employees, at least one of whom is an officer or manager of the safe deposit company and at least one of whom is a notary public. The safe deposit company shall inventory the contents of the box in detail as provided by the comptroller's reporting instructions and place the contents of the box in a sealed envelope or container bearing the name of the lessee.

(b) The safe deposit company has a lien on the contents of the box for an amount equal to the rental owed for the box and the cost of opening the box. The safe deposit company may retain possession of the contents not later than two years from the date of the opening of the box plus a reasonable period to dispose of the contents of the box. If the rental and the cost of opening the box are not paid before the second anniversary of the date the box was opened, or if the rental agreement is being terminated for a reason other than delinquent payment, and the lessee has failed to retrieve the contents in a reasonable period after notice of the termination has been sent or delivered, the safe deposit company may sell all or part of the contents at public auction in the manner and with the notice prescribed by Section 51.002, Property Code, for the sale of real property under a deed of trust. Any unsold contents of the box and any excess proceeds from a sale of contents shall be remitted to the comptroller as provided by Chapters 72-75, Property Code.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 915 (S.B. 1400), Sec. 2, eff. September 1, 2017.

Sec. 59.110. ROUTING NUMBER ON KEY. (a) A depository institution that rents or permits access to a safe deposit box shall imprint the depository institution's routing number on each key to the box or on a tag attached to the key.

(b) If a depository institution believes that the routing number imprinted on a key, or on a tag attached to a key, used to open a safe deposit box has been altered or defaced so that the correct routing number is illegible, the depository institution shall notify the Department of Public Safety of the State of Texas, on a form designed by the banking commissioner, not later than the 10th day after the date the key is used to open the box.

(c) This section does not require a depository institution to inspect the routing number imprinted on a key or an attached tag to determine whether the number has been altered or defaced. A depository institution that has imprinted a key to a safe deposit

box or a tag attached to the key as provided by this section and that follows applicable law and the depository institution's established security procedures in permitting access to the box is not liable for any damage arising because of access to or removal of the contents of the box.

(d) Subsection (a) does not apply to a key issued under a lease in effect on September 1, 1992, until the date the term of that lease expires, without regard to any extension of the lease term.

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

SUBCHAPTER C. ELECTRONIC TERMINALS

Sec. 59.201. ELECTRONIC TERMINALS AUTHORIZED; SHARING OF ELECTRONIC TERMINAL. (a) A person may install, maintain, and operate one or more electronic terminals at any location for the convenience of customers of financial institutions.

(b) Financial institutions may agree in writing to share in the use of an electronic terminal on a reasonable, nondiscriminatory basis and on the condition that a financial institution using an electronic terminal may be required to meet necessary and reasonable technical standards and to pay charges for the use of the electronic terminal. The standards or charges imposed must be reasonable, fair, equitable, and nondiscriminatory among the financial institutions. Any charges imposed:

(1) may not exceed an equitable proportion of the cost of establishing the electronic terminal, including provisions for amortization of development costs and capital expenditures over a reasonable period, and the cost of operation and maintenance of the electronic terminal, plus a reasonable return on those costs; and

(2) must be related to the services provided to the financial institution or its customers.

(c) This section does not apply to:

(1) an electronic terminal located at the domicile or home office or a branch of a financial institution; or

(2) the use by a person of an electronic terminal, regardless of location, solely to withdraw cash, make account

balance inquiries, or make transfers between the person's accounts in the same financial institution.

(d) In this section, the term "financial institution" has the meaning assigned by Section [201.101](#).

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 356, Sec. 1, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 344, Sec. 2.017, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 412, Sec. 2.16, eff. Sept. 1, 2001.

Sec. 59.202. USER FEE FOR SHARED ELECTRONIC TERMINAL. (a) The owner of an electronic terminal that is located in this state and that is connected to a shared network may impose a fee for the use of that terminal if imposition of the fee is disclosed at a time and in a manner that allows a user to avoid the transaction without incurring the transaction fee.

(b) An agreement to share an electronic terminal may not:

(1) limit the right of the owner of an electronic terminal to charge a fee described by Subsection (a) as allowed by the law of this state or the United States;

(2) require the owner to limit or waive its rights or obligations under this section; or

(3) otherwise discriminate in any manner against the owner as a result of the owner's charging of a fee authorized under this section.

(c) In this section:

(1) "Electronic fund transfer" means any transfer of money, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal and orders, instructs, or authorizes a financial institution to debit or credit an account. The term includes a point-of-sale transfer, an unmanned teller machine transaction, and a cash dispensing machine transaction.

(2) "Electronic terminal" means an electronic device, other than a telephone, through which a consumer may initiate an electronic fund transfer. The term includes a point-of-sale terminal, an unmanned teller machine, and a cash dispensing machine.

(3) "Financial institution" has the meaning assigned by Section 201.101.

(4) "Shared network" means an electronic information communication and processing facility used by two or more owners of electronic terminals to receive, transmit, or retransmit electronic impulses or other electronic indicia of transactions, originating at electronic terminals, to financial institutions or to other transmission facilities for the purpose of:

(A) the withdrawal by a customer of money from the customer's account, including a withdrawal under a line of credit previously authorized by a financial institution for the customer;

(B) the deposit of money by a customer in the customer's account with a financial institution;

(C) the transfer of money by a customer between one or more accounts maintained by the customer with a financial institution, including the application of money against an indebtedness of the customer to the financial institution; or

(D) a request for information by a customer concerning the balance of the customer's account with a financial institution.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.018, eff. Sept. 1, 1999.

SUBCHAPTER D. SAFETY AT UNMANNED TELLER MACHINES

Sec. 59.301. DEFINITIONS. In this subchapter:

(1) "Access area" means a paved walkway or sidewalk that is within 50 feet of an unmanned teller machine. The term does not include a public right-of-way or any structure, sidewalk, facility, or appurtenance incidental to the right-of-way.

(2) "Access device" has the meaning assigned by Regulation E (12 C.F.R. Section 205.2), as amended, adopted under the Electronic Fund Transfer Act (15 U.S.C. Section 1693 et seq.), as amended.

(3) "Candlefoot power" means the light intensity of candles on a horizontal plane at 36 inches above ground level and

five feet in front of the area to be measured.

(4) "Control" means the authority to determine how, when, and by whom an access area or defined parking area may be used, maintained, lighted, and landscaped.

(5) "Customer" means an individual to whom an access device is issued for personal, family, or household use.

(6) "Defined parking area" means the portion of a parking area open for unmanned teller machine customer parking that is contiguous to an access area, is regularly, principally, and lawfully used during the period beginning 30 minutes after sunset and ending 30 minutes before sunrise for parking by customers using the machine, and is owned or leased by the owner or operator of the machine or owned or controlled by a person leasing the machine site to the owner or operator of the machine. The term does not include:

(A) a parking area that is physically closed or on which one or more conspicuous signs indicate that the area is closed; or

(B) a level of a multiple-level parking area other than the level considered by the operator of the unmanned teller machine to be the most directly accessible to a customer.

(7) "Financial institution" has the meaning assigned by Section [201.101](#).

(8) "Operator" means the person primarily responsible for the operation of an unmanned teller machine.

(9) "Owner" means a person having the right to determine which financial institutions are permitted to use or participate in the use of an unmanned teller machine.

(10) "Unmanned teller machine" means a machine, other than a telephone, capable of being operated solely by a customer to communicate to a financial institution:

(A) a request to withdraw money from the customer's account directly or under a line of credit previously authorized by the financial institution for the customer;

(B) an instruction to deposit money in the customer's account with the financial institution;

(C) an instruction to transfer money between one or more accounts maintained by the customer with the financial

institution;

(D) an instruction to apply money against an indebtedness of the customer to the financial institution; or

(E) a request for information concerning the balance of the account of the customer with the financial institution.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.019, eff. Sept. 1, 1999.

Sec. 59.302. EXCEPTION FOR CERTAIN UNMANNED TELLER MACHINES. This subchapter does not apply to an unmanned teller machine:

(1) by which:

(A) a customer of a financial institution can authorize and effect the electronic transfer of money from the customer's account at the financial institution to a merchant's account at a financial institution in the county or municipality in which the terminal is located to obtain cash or to purchase, rent, or pay for goods or services; and

(B) the merchant can ascertain that the transaction has been completed and the money has been or will be transferred to the merchant's account at the merchant's financial institution in the county or municipality in which the terminal is located; or

(2) located:

(A) inside a building:

(i) unless the building is a freestanding installation existing solely to provide an enclosure for the machine; or

(ii) except to the extent a transaction can be conducted from outside the building; or

(B) in an area not controlled by the owner or operator of the machine.

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

Sec. 59.303. APPLICABILITY TO CERTAIN PERSONS WHO ARE NOT OWNERS OR OPERATORS. (a) A person is not an owner or operator

solely because the person's primary function is to provide for the exchange, transfer, or dissemination of electronic fund transfer data.

(b) A person whose primary function is to provide for the exchange, transfer, or dissemination of electronic fund transfer data and who is not an owner or operator is not liable to a customer or user of an unmanned teller machine for a claim arising out of or in connection with a use or attempted use of the machine.

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

Sec. 59.304. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter does not require the relocation or modification of an unmanned teller machine on the occurrence of a particular event or circumstance.

(b) A violation of this subchapter or a rule adopted under this subchapter is not negligence per se. Substantial compliance with this subchapter and each rule adopted under this subchapter is prima facie evidence that a person has provided adequate safety protection measures relating to an unmanned teller machine under this subchapter.

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

Sec. 59.305. LIGHTING REQUIRED. During the period beginning 30 minutes after sunset and ending 30 minutes before sunrise, lighting shall be provided for:

- (1) an unmanned teller machine;
- (2) the machine's access area and defined parking area; and
- (3) the exterior of the machine's enclosure, if the machine is located in an enclosure.

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

Sec. 59.306. PERSONS REQUIRED TO PROVIDE LIGHTING. (a) Except as provided by Subsection (b), the owner or operator shall provide the lighting required by this subchapter.

(b) A person who leases the site where an unmanned teller machine is located shall provide the lighting required by this

subchapter if the person controls the access area or defined parking area for the machine and the owner or operator does not control the access area or defined parking area.

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

Sec. 59.307. STANDARDS FOR LIGHTING. The lighting must be at least:

(1) 10 candlefoot power at the face of the unmanned teller machine and extending in an unobstructed direction outward five feet;

(2) two candlefoot power within 50 feet from any unobstructed direction from the face of the machine, except as provided by Subdivision (3);

(3) if the machine is located within 10 feet of the corner of a building and is generally accessible from the adjacent side, two candlefoot power along the first 40 unobstructed feet of the adjacent side of the building; and

(4) two candlefoot power in the part of the defined parking area within 60 feet of the unmanned teller machine.

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

Sec. 59.308. SAFETY EVALUATION. (a) An owner or operator shall in good faith evaluate the safety of each unmanned teller machine that the person owns or operates.

(b) In making the evaluation, the owner or operator shall consider:

(1) the extent to which the lighting for the machine complies with Section [59.307](#);

(2) the presence of obstructions, including landscaping and vegetation, in the area of the machine and the access area and defined parking area for the machine; and

(3) the incidence of violent crimes in the immediate neighborhood of the machine as shown by local law enforcement records and of which the owner or operator has actual knowledge.

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

Sec. 59.309. NOTICE OF SAFETY PRECAUTIONS. (a) An issuer

of an access device shall give the customer a notice of basic safety precautions that the customer should follow while using an unmanned teller machine.

(b) The issuer shall personally deliver or mail the notice to each customer whose mailing address is in this state according to records for the account to which the access device relates. If the issuer furnishes an access device to more than one customer on the same account, the issuer is required to furnish a notice to only one of the customers.

(c) The issuer may furnish information under this section with other disclosures related to the access device, including an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act (15 U.S.C. Section 1693 et seq.). Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 59.310. ENFORCEMENT AND RULES. (a) The finance commission and the Credit Union Commission shall enforce this subchapter and adopt rules to implement this subchapter.

(b) The rules must establish security requirements to be implemented by a financial institution for the operation of an unmanned teller machine. The rules may require the financial institution to install and maintain security devices in addition to those required by this subchapter to be operated in conjunction with the machine for the protection of customers using the machine, including:

(1) video surveillance equipment that is maintained in working order and operated continuously during the hours of operation of the machine; and

(2) adequate lighting around the premises that contain the machine.

(b-1) The rules may provide for a system that enhances customer security, taking into account emerging technologies, the availability of networks to exchange information, and the potential compliance costs for financial institutions and other unmanned teller machine service providers.

(c) A financial institution that violates a rule adopted under this section is subject to a civil penalty of not less than

\$50 or more than \$1,000 for each day of violation and each act of violation.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 692 (H.B. [1795](#)), Sec. 1, eff. June 15, 2007.