FINANCE CODE

TITLE 1. GENERAL PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Section 323.007, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the law encompassed by this code more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

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

Sec. 1.002. CONSTRUCTION OF CODE. Chapter 311, Government Code (Code Construction Act), applies to the construction of each provision in this code except as otherwise expressly provided by this code.

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

Sec. 1.003. REFERENCE IN LAW TO STATUTE REVISED BY CODE. A reference in a law to a statute or a part of a statute revised by this code is considered to be a reference to the part of this code that revises that statute or part of that statute.

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

TITLE 2. FINANCIAL REGULATORY AGENCIES

CHAPTER 11. FINANCE COMMISSION OF TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. (a) The definitions provided by Section 31.002 apply to this chapter.

(b) In this chapter, "finance agency" means:

(1) the Texas Department of Banking;

(2) the Department of Savings and Mortgage Lending; or

(3) the Office of Consumer Credit Commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.002, eff. September 1, 2007.

Sec. 11.002. PURPOSE OF COMMISSION; STRATEGIC PLAN. (a) The finance commission is responsible for overseeing and coordinating the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner and serves as the primary point of accountability for ensuring that state depository and lending institutions function as a system, considering the broad scope of the financial services industry. The finance commission is the policy-making body for those finance agencies and is not a separate state agency. The finance commission shall carry out its functions in a manner that protects consumer interests, maintains a safe and sound banking system, and increases the economic prosperity of the state.

(b) The finance commission shall prepare and periodically update a strategic plan for coordination of the state financial system. Each finance agency shall cooperate in preparation of the plan.

Added by Acts 2001, 77th Leg., ch. 867, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.003, eff. September 1, 2007.

SUBCHAPTER B. COMPOSITION AND OPERATION

Sec. 11.101. APPOINTMENT; TERMS; OATH. (a) The Finance

Commission of Texas is composed of 11 members appointed by the governor with the advice and consent of the senate.

(b) Members of the finance commission serve staggered six-year terms, with as near as possible to one-third of the members' terms expiring February 1 of each even-numbered year.

(c) An appointment to the finance commission must be made without regard to the race, color, age, sex, religion, disability, or national origin of the appointee.

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

Acts 2011, 82nd Leg., R.S., Ch. 881 (S.B. 249), Sec. 1, eff. June 17, 2011.

Sec. 11.102. QUALIFICATIONS OF MEMBERS. (a) A member of the finance commission must be a registered voter of this state. Not more than two members may be residents of the same state senatorial district.

(b) Two members of the finance commission must be banking executives, one member of the finance commission must be a savings executive, one member of the finance commission must be a consumer credit executive, and one member of the finance commission must be a residential mortgage loan originator licensed under Chapter 156 or 157.

(c) Six members of the finance commission must be representatives of the general public. At least one of those members must be a certified public accountant.

(d) A person may not be a public member of the finance commission if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in an industry regulated by a finance agency;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from a finance agency;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from a finance agency; or

(4) uses or receives a substantial amount of tangible goods, services, or money from a finance agency other than

compensation or reimbursement authorized by law for finance commission membership, attendance, or expenses.

(e) For the purposes of this section:

(1) "Banking executive" means a person who:

(A) has had five years' or more executive experience in a bank during the seven-year period preceding the person's appointment; and

(B) is an officer of a state bank.

(2) "Savings executive" means a person who:

(A) has had five years' or more executive experience in a savings association or savings bank during the seven-year period preceding the person's appointment; and

(B) is an officer of a state savings association or savings bank.

(3) "Consumer credit executive" means a person who:

(A) has had five years' or more executive experience in an entity regulated by the consumer credit commissioner during the seven-year period preceding the person's appointment; and

(B) is an officer of an entity regulated by the consumer credit commissioner.

(4) "Residential mortgage loan originator" means a person who:

(A) has had five years' or more experience as a residential mortgage loan originator, as defined by Section 180.002, during the seven-year period preceding the person's appointment; and

(B) is a residential mortgage loan originator, as defined by Section 180.002.

(f) Experience as banking commissioner, deputy banking commissioner, examiner, or supervisor of examiners for a state or federal banking regulatory agency is considered executive experience in a bank for the purposes of Subsection (e)(1)(A). Experience as savings and mortgage lending commissioner, deputy savings and mortgage lending commissioner, examiner, or supervisor of examiners for a state or federal savings and loan regulatory agency is considered executive experience in a savings association or savings bank for the purposes of Subsection (e)(2)(A).

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.004, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 645 (S.B. 1008), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 645 (S.B. 1008), Sec. 2, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 881 (S.B. 249), Sec. 2, eff. June 17, 2011.

Sec. 11.1021. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the finance commission if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in an industry regulated by a finance agency; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in an industry regulated by a finance agency.

(c) A person may not be a member of the finance commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of a finance agency.

Added by Acts 2001, 77th Leg., ch. 867, Sec. 4, eff. Sept. 1, 2001.

Sec. 11.103. REMOVAL OF MEMBERS. (a) It is a ground for removal from the finance commission that a member:

(1) does not have at the time of taking office the qualifications required by Section 11.102;

(2) does not maintain during service on the finance commission the qualifications required by Section 11.102;

(3) is ineligible for membership under Section 11.102 or 11.1021;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled finance commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the finance commission.

(b) If the banking commissioner, savings and mortgage lending commissioner, or consumer credit commissioner has knowledge that a potential ground for removal exists, the banking commissioner, savings and mortgage lending commissioner, or consumer credit commissioner shall notify the presiding officer of the finance commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the banking commissioner, savings and mortgage lending commissioner, or consumer credit commissioner shall notify the next highest ranking officer of the finance commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

(c) The validity of an action of the finance commission is not affected by the fact that it was taken when a ground for removal of a member of the finance commission existed.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 5, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.005, eff. September 1, 2007.

Sec. 11.104. EXPENSES AND COMPENSATION OF MEMBERS. A member of the finance commission is entitled to:

(1) the reimbursement for reasonable and necessary expenses incidental to travel incurred in connection with the performance of official duties; and

(2) a per diem for each day that the member engages in the business of the finance commission.

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

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(b),

eff. September 1, 2009.

Sec. 11.105. MATTER IN WHICH MEMBER HAS PERSONAL INTEREST. A member of the finance commission may not act or participate in the portion of a commission meeting during which the matter considered specifically relates to an entity:

(1) of which the member or the member's spouse is an officer, director, stockholder, shareholder, or owner; or

(2) in which the member or the member's spouse has another financial interest.

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. 1, eff. September 1, 2007.

Sec. 11.106. MEETINGS. (a) The finance commission shall hold at least six regular public meetings during each calendar year on dates set by the commission.

(b) The presiding officer or three members of the finance commission may call a special public meeting of the commission.

(c) The finance commission may hold an open or closed special meeting by telephone conference call if:

(1) immediate action is required;

(2) the convening at one location of a quorum of the finance commission is difficult or impossible;

(3) notice is given for the meeting as for other meetings;

(4) the notice specifies a location for the meeting at which the public may attend;

(5) each part of the meeting that is required to be open to the public is audible to the public at the location specified in the notice of the meeting; and

(6) the meeting is tape-recorded and the tape recording of each portion of the meeting that is required to be open to the public is made available to the public.

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

Sec. 11.107. PRESIDING OFFICER. (a) The governor shall appoint a member of the finance commission as presiding officer of the commission. The presiding officer serves at the will of the governor.

(b) The presiding officer shall preside at and provide for the keeping of minutes of each public meeting of the finance commission.

(c) The presiding officer may:

(1) adopt rules and procedures as the presiding officer considers necessary for the orderly operation of the finance commission and for communication among the finance commission, the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner;

(2) adopt internal procedures governing the time and place of meetings, the type of notice for special public meetings, the manner in which public meetings are to be conducted, and other similar matters; and

(3) appoint committees composed of finance commission members as the presiding officer considers necessary to carry out the commission's business.

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

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.006, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 1, eff. June 14, 2013.

Sec. 11.108. SUNSET PROVISION. The finance commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2031.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.02, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1279 (H.B. 1675), Sec. 3.02, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 1, eff.

September 1, 2019.

Sec. 11.109. STANDARDS OF CONDUCT. The presiding officer of the finance commission or the presiding officer's designee shall provide to members of the finance commission, as often as necessary, information regarding the requirements for office under this title, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 2001, 77th Leg., ch. 867, Sec. 7, eff. Sept. 1, 2001.

Sec. 11.110. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the finance commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the finance commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the finance agencies and the finance commission;

(2) the programs operated by the finance agencies;

(3) the role and functions of the finance agencies;

(4) the rules of the finance commission with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the finance agencies;

(6) the results of the most recent formal audit of the finance agencies;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the finance commission or the Texas Ethics Commission.

(c) A person appointed to the finance commission is entitled to reimbursement under Section 11.104, as if the person were a member of the finance commission, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The commissioner of each finance agency shall create a training manual that includes the information required by Subsection (b) applicable to that commissioner's agency. The commissioner of each finance agency shall distribute a copy of the training manual created under this subsection annually to each member of the finance commission. Each member of the finance commission shall sign and submit to the appropriate commissioner a statement acknowledging that the member received and has reviewed the training manual.

(e) Notwithstanding Subsection (d), the commissioner of each finance agency may collaborate and jointly create one training manual that includes the information required by Subsection (b) applicable to each finance agency.

Added by Acts 2001, 77th Leg., ch. 867, Sec. 7, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(c), eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 2, eff. September 1, 2019.

Sec. 11.111. SEPARATION OF FUNCTIONS. The finance commission shall develop and implement policies that clearly separate the policymaking responsibilities of the finance commission and the management responsibilities of the banking commissioner, savings and mortgage lending commissioner, and consumer credit commissioner and staff of the finance agencies.

Added by Acts 2001, 77th Leg., ch. 867, Sec. 7, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.007, eff. September 1, 2007.

Sec. 11.112. PUBLIC TESTIMONY. The finance commission shall develop and implement policies that provide the public with a

reasonable opportunity to appear before the finance commission and to speak on any issue under the jurisdiction of the finance agencies.

Added by Acts 2001, 77th Leg., ch. 867, Sec. 7, eff. Sept. 1, 2001.

Sec. 11.113. ADVISORY COMMITTEES. (a) The finance commission may appoint advisory committees to assist the finance commission in performing its duties.

(b) The finance commission shall specify each committee's purpose, powers, and duties and shall require each committee to report to the finance commission in the manner specified by the finance commission concerning the committee's activities and the results of its work.

Added by Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 3, eff. September 1, 2019.

SUBCHAPTER C. STAFF AND EXPENSES

Sec. 11.202. HEARINGS OFFICER AND AUDITOR. (a) The finance commission shall direct a finance agency to employ an internal auditor to provide services to and facilitate commission oversight and control over the finance agencies.

(b) The Texas Department of Banking may employ a hearings officer to serve the finance agencies as determined by interagency agreement. For the purposes of Section 2003.021, Government Code, a hearings officer employed under this section is considered to be an employee of each agency for which hearing services are provided. The hearings officer's only duty is to preside over matters related to contested cases before a finance agency.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 8, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 4, eff. September 1, 2019.

Sec. 11.203. LIMITATION ON DIRECTION OF AUDITOR. The internal auditor reports to the finance commission and is not subject to

direction by the employing finance agency.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 9, eff. Sept. 1, 2001.

Sec. 11.204. SHARING OF STAFF, EQUIPMENT, AND FACILITIES; ALLOCATION OF COSTS. (a) The finance commission shall use the staff, equipment, and facilities of the finance agencies to the extent necessary to carry out the finance commission's duties. To reduce administrative costs, the finance agencies shall share staff, equipment, and facilities to the extent that the sharing contributes to cost efficiency without detracting from the staff expertise needed for individual areas of agency responsibility.

(b) An interagency agreement must provide that the cost of staff used by the finance commission, including the internal auditor, is to be charged to the finance agencies in proportion to the amount of time devoted to each agency's business. All other costs of operation of the finance commission are to be shared by and included in the budgets of the finance agencies in proportion to the amount of cash receipts of each of those agencies.

(c) The finance commission shall have charge and control of the property known as the Finance Commission Building and use of staff, equipment, and facilities of the finance agencies. The Finance Commission Building refers to the property located in the city of Austin and titled in the name of the Banking Section of the Finance Commission of Texas, as described by deed recorded in Volume 5080, Page 1099, of the Deed Records of Travis County, Texas.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 10, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(d), eff. September 1, 2009.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 11.301. BANKING RULES. The finance commission may adopt banking rules as provided by Section 31.003.

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

Sec. 11.302. SAVINGS ASSOCIATION AND SAVINGS BANK RULES. (a) The finance commission may adopt rules applicable to state savings associations or to savings banks and may authorize state savings associations and savings banks to invest money of state savings associations or savings banks in any manner permitted for a federal savings association or federal savings bank domiciled in this state. This subsection does not authorize the finance commission to diminish or limit a right or power specifically given to state savings associations or savings banks by state law.

(b) The finance commission may adopt rules to:

(1) prevent state savings associations or savings banks from concentrating an excessive or unreasonable portion of the resources of state savings associations or savings banks in a type or character of loan or security authorized by Subtitle B or C, Title 3; and

(2) establish standards for investments by state savings associations or savings banks, including limits on the amount that a state savings association or savings bank may invest in a type or character of investment to an amount or percentage of the savings association's or savings bank's assets or net worth.

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

Sec. 11.303. DISCLOSURE OF CERTAIN INFORMATION TO FINANCE COMMISSION PROHIBITED. Information regarding the financial condition of a state savings association or savings bank obtained through examination or otherwise may not be disclosed to a member of the finance commission, except that the savings and mortgage lending commissioner may disclose to the finance commission a file or record pertinent to a hearing or matter pending before the commission.

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

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.008, eff. September 1, 2007.

Sec. 11.304. CONSUMER CREDIT RULES. The finance commission may

adopt rules necessary to supervise the consumer credit commissioner and ensure compliance with Chapter 14 and Title 4.

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

Sec. 11.305. RESEARCH. (a) The consumer credit commissioner shall establish a program to address alternatives to high-cost lending in this state. The program shall:

(1) study and report on high-cost lending, including the availability, quality, and prices of financial services offered in this state to individual consumers in this state; and

(2) evaluate alternatives to high-cost lending and the practices of business entities in this state that provide financial services to individual consumers in this state.

(b) The program may:

(1) apply for and receive public and private grants and gifts to conduct the research authorized by this section;

(2) contract with public and private entities to carry out studies and analyses under this section;

(3) provide funding for pilot programs; and

(4) make grants to nonprofit institutions working to provide alternatives to high-cost loans.

(c) Not later than December 1 of each year, the consumer credit commissioner shall provide to the legislature a report detailing its findings and making recommendations to improve the availability, quality, and prices of financial services.

(d) The Texas Department of Banking and the Department of Savings and Mortgage Lending shall jointly conduct a continuing review of the condition of the state banking system. The review must include a review of all available national and state economic forecasts and an analysis of changing banking practices and new banking legislation. Periodically the departments shall submit a report to the finance commission on the results of the review, including information relating to the condition of the state banking system at the time of the report and the predicted condition of that system in the future.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 11, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 916, Sec. 7, eff. Sept. 1, 2001; Acts 2003,

78th Leg., ch. 211, Sec. 2.03(c), eff. June 16, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.009, eff. September 1, 2007.
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 1, eff. September 1, 2019.

Sec. 11.3055. FINANCIAL SERVICES STUDY. (a) The finance commission may assign the banking commissioner, savings and mortgage lending commissioner, or consumer credit commissioner to conduct research on:

(1) the availability, quality, and prices of financial services, including lending and depository services, offered in this state to agricultural businesses, small businesses, and individual consumers in this state; and

(2) the practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state.

(b) The banking commissioner, savings and mortgage lending commissioner, or consumer credit commissioner may:

(1) apply for and receive public and private grants and gifts to conduct the research authorized by this section; and

(2) contract with public and private entities to carry out studies and analyses under this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. September 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 867, Sec. 11, eff. September 1, 2001.
Renumbered from Finance Code Sec. 11.305(a), (b) and amended by Acts 2003, 78th Leg., ch. 211, Sec. 2.03(c), eff. June 16, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.010, eff. September 1, 2007.

Sec. 11.306. RESIDENTIAL MORTGAGE LOAN ORIGINATION RULES. The finance commission may adopt residential mortgage loan origination rules as provided by Chapter 156.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 867, Sec. 12, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 1, eff. September 1, 2011.

Sec. 11.307. RULES RELATING TO CONSUMER COMPLAINTS. (a) The finance commission shall adopt rules applicable to each entity regulated by the Texas Department of Banking or the Department of Savings and Mortgage Lending specifying the manner in which the entity provides consumers with information on how to file complaints with the appropriate agency.

(b) The finance commission shall adopt rules applicable to each entity regulated by a finance agency requiring the entity to include information on how to file complaints with the appropriate agency in each privacy notice that the entity is required to provide consumers under law, including Pub. L. No. 106-102.

Added by Acts 2001, 77th Leg., ch. 867, Sec. 13, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.011, eff. September 1, 2007.

Sec. 11.308. INTERPRETATION OF HOME EQUITY LENDING LAW. The finance commission may, on request of an interested person or on its own motion, issue interpretations of Sections 50(a)(5)-(7), (e)-(p), (t), and (u), Article XVI, Texas Constitution. An interpretation under this section is subject to Chapter 2001, Government Code, and is applicable to all lenders authorized to make extensions of credit under Section 50(a)(6), Article XVI, Texas Constitution, except lenders regulated by the Credit Union Commission. The finance commission and the Credit Union Commission shall attempt to adopt interpretations that are as consistent as feasible or shall state justification for any inconsistency.

Acts 2003, 78th Leg., ch. 1207, Sec. 1, eff. Sept. 13, 2003.

Sec. 11.309. RULES RELATING TO CHECK VERIFICATION ENTITIES.

(a) In this section, "check verification entity" and "financial institution" have the meanings assigned by Section 523.052, Business & Commerce Code.

(b) The finance commission shall adopt rules:

(1) requiring a check verification entity to register with the banking commissioner:

(A) at the intervals the finance commission determines, but not less frequently than annually; and

(B) by providing to the banking commissioner the information that the finance commission determines is necessary to enable a financial institution or a check verification entity to comply with the requirements of Section 523.052, Business & Commerce Code;

(2) authorizing the banking commissioner to charge a check verification entity a reasonable annual fee, not to exceed $100, to register with the commissioner; and

(3) requiring the banking commissioner to establish an electronic notification system, through secure e-mail or another secure system, to be used by a financial institution to notify check verification entities as required by Section 523.052, Business & Commerce Code.

(c) The finance commission may not impose a duty on the banking commissioner under Subsection (b)(3) to verify the validity or completeness of information transmitted through the electronic notification system.

(d) The banking commissioner may solicit and accept gifts, grants, and donations from public and private entities to establish and maintain the secure notification system.

Added by Acts 2007, 80th Leg., R.S., Ch. 1044 (H.B. 2002), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 10.001, eff. September 1, 2009.

CHAPTER 12. TEXAS DEPARTMENT OF BANKING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 12.001. DEFINITIONS. The definitions provided by Section 31.002 apply to this chapter.

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

SUBCHAPTER B. OPERATION OF DEPARTMENT

Sec. 12.101. BANKING COMMISSIONER. (a) The banking commissioner is the chief executive officer of the Texas Department of Banking. The finance commission shall appoint the banking commissioner. The banking commissioner serves at the will of the finance commission and is subject to the finance commission's orders and directions.

(b) The banking commissioner must have not less than seven years' experience in banking or bank supervision.

(c) The finance commission shall set the compensation of the banking commissioner. The compensation shall be paid from money of the department.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 14, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 367 (H.B. 3536), Sec. 1, eff. September 1, 2015.

Sec. 12.102. DEPUTY BANKING COMMISSIONERS. (a) The banking commissioner shall appoint one or more deputy banking commissioners as necessary to the efficient operation of the department. The banking commissioner shall prescribe the qualifications and duties of a deputy banking commissioner.

(b) During the banking commissioner's absence or inability to serve, a deputy banking commissioner has the powers and shall perform the duties of the banking commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 1.01, eff. Sept. 1, 2001.

Sec. 12.104. OATH OF OFFICE. Before assuming the duties of office, each deputy banking commissioner, examiner, assistant examiner, conservator, supervisor, and special agent, and each other officer or employee specified by the banking commissioner, must take an oath of office to:

(1) discharge faithfully the duties assigned; and

(2) uphold the constitution and laws of this state and of the United States.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 1.02, eff. Sept. 1, 2001.

Sec. 12.105. FEES, REVENUE, AND EXPENSES; AUDIT. (a) The finance commission shall establish reasonable and necessary fees for the administration of this chapter, Chapter 11, Chapter 13, and Subtitle A, Title 3.

(b) The costs of an audit of the department under Chapter 321, Government Code, shall be paid to the state auditor from the money of the department.

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

Sec. 12.106. LIABILITY. (a) The banking commissioner, a member of the finance commission, a deputy banking commissioner, an examiner, assistant examiner, supervisor, conservator, agent, or other officer or employee of the department, or an agent of the banking commissioner is not personally liable for damages arising from the person's official act or omission unless the act or omission is corrupt or malicious.

(b) The attorney general shall defend an action brought against a person because of an official act or omission under Subsection (a) regardless of whether the defendant has terminated service with the department before the action commences.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 1.03, eff. Sept. 1, 2001.

Sec. 12.107. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state that:

(1) is primarily designed to assist its members and its industry or profession in dealing with mutual business or

professional problems and in promoting their common interest; and

(2) includes business and professional competitors located in this state among its members.

(b) A person may not be a department employee if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in an industry regulated by the department; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in an industry regulated by the department.

(c) A person may not act as the general counsel to the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(d) A department employee may not:

(1) purchase an asset owned by a person regulated by the department in the possession of the banking commissioner or other receiver for purposes of liquidation, unless the asset is purchased at public auction or with the approval of the receivership court;

(2) except as provided by Subsection (e), become directly or indirectly indebted to a person regulated by the department;

(3) except as provided by Subsection (f), become directly or indirectly financially interested in a person regulated by the department; or

(4) obtain a product or service from a person regulated by the department, or an affiliate of a person regulated by the department, on terms or rates that are more favorable to the employee than those prevailing at the time for comparable transactions with or involving other similarly situated consumers.

(e) Subject to Subsection (d)(4) and except as otherwise provided by employment policies adopted by the banking commissioner, Subsection (d)(2) does not prohibit indebtedness of:

(1) a clerical or administrative employee to a person regulated by the department, if the employee does not exercise discretionary decision-making authority with respect to the person; or

(2) an employee of the department, other than a clerical or administrative employee, if the indebtedness was permissible when incurred and became prohibited indebtedness under Subsection (d)(2)

as a result of employment by the department or a circumstance over which the employee has no control, including a merger, acquisition, purchase or sale of assets, or assumption of liabilities involving a regulated person, if the employee:

(A) repays the indebtedness; or

(B) does not knowingly participate in or consider any matter concerning the person to whom the employee is indebted.

(f) Except as otherwise provided by employment policies adopted by the banking commissioner, Subsection (d)(3) does not prohibit a financial interest of an employee of the department solely because:

(1) the employee owns publicly traded shares of a registered investment company (mutual fund) that owns publicly traded equity securities issued by a person regulated by the department; or

(2) the spouse of or other person related to the employee is employed by a person regulated by the department and receives equity securities of the person through participation in an employee benefit plan, including an employee stock option, bonus, or ownership plan, if:

(A) the sole purpose of the plan is to compensate employees with an ownership interest in the person for services rendered; and

(B) the employee does not knowingly participate in or consider any matter concerning the person until the spouse or other related person no longer owns equity securities issued by the person.

(g) The banking commissioner may adopt employment policies relating to this section, including policies to:

(1) require employees to notify the department of possible conflicts of interest;

(2) specify the manner or extent of required recusal;

(3) define the circumstances under which adverse employment action may be taken; and

(4) impose more restrictive requirements on senior officers of the department for whom recusal is not viable or consistent with the prudent exercise of the department's responsibilities.

(h) The finance commission may adopt rules to administer this section, including rules to:

(1) codify employment policies of the banking commissioner adopted under Subsection (g);

(2) define or further define terms used by this section; and

(3) establish limits, requirements, or exemptions other than those specified by this section, except that an exempted employee must be recused from participation in or consideration of all regulatory matters specifically concerning the person to whom the exempted indebtedness is owed or the financial interest relates.

(i) Before the 11th day after the date on which an employee begins employment with the department, the employee shall read the conflict-of-interest statutes, rules, and policies applicable to employees of the department and sign a notarized affidavit stating that the employee has read those statutes, rules, and policies.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 699, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 412, Sec. 1.04, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 8.001, eff. Sept. 1, 2003.

Sec. 12.108. CONSUMER INFORMATION AND COMPLAINTS. (a) The department shall maintain a system to promptly and efficiently act on complaints filed with the department. The department shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The department shall make information available describing its procedures for complaint investigation and resolution.

(c) The department shall periodically notify the complaint parties of the status of the complaint until final disposition.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 699, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 5, eff. September 1, 2019.

Sec. 12.1085. FINANCIAL LITERACY PROGRAM. (a) The department shall seek to improve the financial literacy and education of persons in this state and to encourage access to mainstream financial products and services by persons who have not previously participated in the conventional finance system, by:

(1) coordinating, encouraging, and aiding banks in the

development and promotion of financial literacy and education programs and community outreach;

(2) serving as a clearinghouse of information about financial literacy and education programs;

(3) creating and maintaining a resource bank of materials pertaining to financial literacy; and

(4) promoting replication of best practices and exemplary programs that foster financial literacy and education.

(b) The department may solicit and accept a gift, grant, or donation from any source, including a foundation, private entity, governmental entity, or institution of higher education, to assist in the implementation of this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 1, eff. September 1, 2007.

Sec. 12.109. SUNSET PROVISION. The office of banking commissioner is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2031.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 699, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.03, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1279 (H.B. 1675), Sec. 3.03, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 6, eff. September 1, 2019.

Sec. 12.111. STANDARDS OF CONDUCT. The banking commissioner or the banking commissioner's designee shall provide to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 4, eff. Sept. 1, 2001.

Sec. 12.112. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The banking commissioner or the banking commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the department to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the department's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 4, eff. Sept. 1, 2001.

Sec. 12.113. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION. (a) The finance commission by rule shall develop a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of rules by the finance commission applicable to the department; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the department's jurisdiction.

(b) The procedures applicable to the department relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative

Hearings for the use of alternative dispute resolution by state agencies.

(c) The department shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 7, eff. September 1, 2019.

Sec. 12.114. ADVISORY COMMITTEES. (a) The banking commissioner may appoint advisory committees to assist the department and banking commissioner in performing their duties.

(b) The banking commissioner shall specify each committee's purpose, powers, and duties and shall require each committee to report to the banking commissioner or department in the manner specified by the banking commissioner concerning the committee's activities and the results of its work.

Added by Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 7, eff. September 1, 2019.

CHAPTER 13. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

Sec. 13.001. DEFINITIONS. The definitions provided by Section 31.002 apply to this chapter.

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

Sec. 13.0015. NAME CHANGES. (a) The Savings and Loan Department is renamed the Department of Savings and Mortgage Lending and the savings and loan commissioner is renamed the savings and mortgage lending commissioner.

(b) A reference in a statute or rule to the Savings and Loan Department means the Department of Savings and Mortgage Lending.

(c) A reference in a statute or rule to the savings and loan

commissioner means the savings and mortgage lending commissioner.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 3.02, eff. September 1, 2005.

Sec. 13.002. SAVINGS AND MORTGAGE LENDING COMMISSIONER. (a) The savings and mortgage lending commissioner is the chief executive officer of the Department of Savings and Mortgage Lending. The finance commission shall appoint the savings and mortgage lending commissioner. The savings and mortgage lending commissioner serves at the will of the finance commission and is subject to the finance commission's orders and direction.

(b) The savings and mortgage lending commissioner must have not less than five years' experience in the executive management of a savings association or savings bank or in savings association or savings bank supervision during the 10 years preceding the commissioner's appointment.

(c) The finance commission shall set the compensation of the savings and mortgage lending commissioner. The compensation shall be paid from money of the Department of Savings and Mortgage Lending.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 15, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.013, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 367 (H.B. 3536), Sec. 2, eff. September 1, 2015.

Sec. 13.003. DEPUTY COMMISSIONERS. (a) The savings and mortgage lending commissioner shall appoint one or more deputy savings and mortgage lending commissioners.

(b) One deputy savings and mortgage lending commissioner must have the qualifications required of the savings and mortgage lending commissioner. During the savings and mortgage lending commissioner's absence or inability to serve, that deputy savings and mortgage lending commissioner has the powers and shall perform the duties of

the savings and mortgage lending commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.014, eff. September 1, 2007.

Sec. 13.004. EXAMINERS. The savings and mortgage lending commissioner shall appoint savings association and savings bank examiners.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.015, eff. September 1, 2007.

Sec. 13.006. OATH OF OFFICE. Before assuming the duties of office, each deputy savings and mortgage lending commissioner, examiner, assistant examiner, conservator, supervisor, and special agent and each other officer or employee specified by the savings and mortgage lending commissioner must take an oath of office to discharge faithfully the duties assigned and uphold the constitution and laws of this state and the United States.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.017, eff. September 1, 2007.

Sec. 13.007. GENERAL POWERS AND DUTIES OF COMMISSIONER. The savings and mortgage lending commissioner shall:

(1) supervise and regulate the organization, operation, and liquidation of state savings associations, as provided by Subtitle B, Title 3, and state savings banks, as provided by Subtitle C, Title 3; and

(2) enforce those subtitles personally or through a deputy savings and mortgage lending commissioner, examiner, supervisor, conservator, or other agent.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.018, eff. September 1, 2007.

Sec. 13.009. CONFLICTS OF LAW. If this chapter conflicts with Subtitle B or C, Title 3, this chapter controls.

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

Sec. 13.010. CONFLICTS OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a Department of Savings and Mortgage Lending employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in a field regulated by the Department of Savings and Mortgage Lending; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in a field regulated by the Department of Savings and Mortgage Lending.

(c) A person may not act as the general counsel to the Department of Savings and Mortgage Lending if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the Department of Savings and Mortgage Lending.

(d) Before the 11th day after the date on which an employee begins employment with the Department of Savings and Mortgage Lending, the employee shall read the conflict-of-interest statutes applicable to employees of the Department of Savings and Mortgage

Lending and sign a notarized affidavit stating that the employee has read those statutes.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 337, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.020, eff. September 1, 2007.

Sec. 13.011. CONSUMER INFORMATION AND COMPLAINTS. (a) The Department of Savings and Mortgage Lending shall maintain a system to promptly and efficiently act on complaints filed with that department. The Department of Savings and Mortgage Lending shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The Department of Savings and Mortgage Lending shall make information available describing its procedures for complaint investigation and resolution.

(c) The Department of Savings and Mortgage Lending shall periodically notify the complaint parties of the status of the complaint until final disposition.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 47(1), eff. September 1, 2019.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 47(1), eff. September 1, 2019.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 337, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.021, eff. September 1, 2007.
Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 8, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 47(1), eff. September 1, 2019.

Sec. 13.012. SUNSET PROVISION. The office of savings and mortgage lending commissioner and the Department of Savings and

Mortgage Lending are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office and department are abolished September 1, 2031.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 337, Sec. 3, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.022, eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.04, eff. June 17, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1279 (H.B. 1675), Sec. 3.04, eff. June 14, 2013.
Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 9, eff. September 1, 2019.

Sec. 13.013. STANDARDS OF CONDUCT. The savings and mortgage lending commissioner or the savings and mortgage lending commissioner's designee shall provide to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2001, 77th Leg., ch. 337, Sec. 4, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.023, eff. September 1, 2007.

Sec. 13.014. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The savings and mortgage lending commissioner or the savings and mortgage lending commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of

personnel, that show the intent of the Department of Savings and Mortgage Lending to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the Department of Savings and Mortgage Lending personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Added by Acts 2001, 77th Leg., ch. 337, Sec. 4, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.024, eff. September 1, 2007.

Sec. 13.016. RECOVERY FUND. (a) The savings and mortgage lending commissioner shall establish, administer, and maintain one recovery fund for the purposes of Chapters 156 and 157. The recovery fund shall be administered and maintained under Subchapter F, Chapter 156.

(b) The savings and mortgage lending commissioner's authority under this section includes the authority to:

(1) set fee amounts under Chapters 156 and 157 for deposit in the recovery fund; and

(2) enforce disciplinary action as provided by Chapters 156 and 157 for a person's failure to comply with the applicable provisions of those chapters relating to the recovery fund and with applicable rules adopted under those chapters.

Added by Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 2, eff. September 1, 2011.

Sec. 13.017. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION. (a) The finance commission by rule shall develop a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008,

Government Code, for the adoption of rules by the finance commission applicable to the Department of Savings and Mortgage Lending; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the Department of Savings and Mortgage Lending's jurisdiction.

(b) The procedures applicable to the Department of Savings and Mortgage Lending relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The Department of Savings and Mortgage Lending shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 10, eff. September 1, 2019.

Sec. 13.018. ADVISORY COMMITTEES. (a) The savings and mortgage lending commissioner may appoint advisory committees to assist the Department of Savings and Mortgage Lending and savings and mortgage lending commissioner in performing their duties.

(b) The savings and mortgage lending commissioner shall specify each committee's purpose, powers, and duties and shall require each committee to report to the savings and mortgage lending commissioner or Department of Savings and Mortgage Lending in the manner specified by the savings and mortgage lending commissioner concerning the committee's activities and the results of its work.

Added by Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 10, eff. September 1, 2019.

CHAPTER 14. CONSUMER CREDIT COMMISSIONER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 14.001. DEFINITIONS. (a) In this chapter:

(1) "Document" includes books, accounts, correspondence, records, and papers.

(2) "Office" means the Office of Consumer Credit Commissioner.

(b) The definitions provided by Section 341.001 apply to this chapter.

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

SUBCHAPTER B. OPERATION OF OFFICE

Sec. 14.051. CONSUMER CREDIT COMMISSIONER. (a) The finance commission shall appoint the commissioner.

(b) The commissioner:

(1) serves at the will of the commission; and

(2) is subject to orders and directions of the commission.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 17, eff. Sept. 1, 2001.

Sec. 14.052. DIVISION OF CONSUMER PROTECTION. The division of consumer protection is a division in the office and is under the direction of the commissioner.

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

Sec. 14.054. OATH OF OFFICE. Before assuming the duties of office, the commissioner and each assistant commissioner, examiner, and other employee of the office must take an oath of office.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 285, Sec. 7, eff. Sept. 1, 2003.

Sec. 14.055. LIABILITY. (a) The commissioner or an assistant commissioner, examiner, or other employee of the office is not personally liable for damages arising from the person's official act or omission unless the act or omission is corrupt or malicious.

(b) The attorney general shall defend an action brought against

a person because of an official act or omission under Subsection (a) regardless of whether the person has terminated service with the office when the action is instituted.

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

Sec. 14.056. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be an employee of the office employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in an industry regulated by the office; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in an industry regulated by the office.

(c) A person may not act as the general counsel to the office if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the office.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1235, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.057. PERFORMANCE EVALUATIONS; MERIT PAY. (a) The commissioner or a person designated by the commissioner shall develop a system of annual employee performance evaluations based on measurable job tasks.

(b) Merit pay for employees of the office must be based on the system established under this section.

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

Sec. 14.058. EQUAL EMPLOYMENT OPPORTUNITY. (a) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the office to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the office's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1235, Sec. 2, eff. Sept. 1, 2001.

Sec. 14.059. INTRA-AGENCY CAREER LADDER. (a) The commissioner or a person designated by the commissioner shall develop an intra-agency career ladder program.

(b) The program must require intra-agency posting of all nonentry level positions concurrently with any public posting.

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

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 2, eff. September 1, 2019.

Sec. 14.061. COST OF AUDIT. The cost of an audit of the office

under Chapter 321, Government Code, shall be paid to the state auditor from the funds of the office.

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

Sec. 14.062. CONSUMER INFORMATION AND COMPLAINTS. (a) The office shall maintain a system to promptly and efficiently act on complaints filed with the office. The office shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The office shall make information available describing its procedures for complaint investigation and resolution.

(c) The office shall periodically notify the complaint parties of the status of the complaint until final disposition.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1235, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 3, eff. September 1, 2019.

Sec. 14.063. APPLICATION OF OPEN MEETINGS LAW. The office is a governmental body subject to Chapter 551, Government Code.

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

Sec. 14.064. CONSUMER INFORMATION. The commissioner shall:

(1) prepare information of consumer interest describing:

(A) the regulatory functions of the office; and

(B) the office's procedures by which consumer complaints are filed with and resolved by the office; and

(2) make the information available to the public and appropriate state agencies.

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

Sec. 14.065. OFFICE EMPLOYEES. The commissioner may appoint, remove, and prescribe the duties of assistant commissioners, examiners, and other employees as necessary to maintain and operate the office, including the division of consumer protection.

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

Sec. 14.066. SUNSET PROVISION. The office is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2031.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1235, Sec. 4, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.05, eff. June 17, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1279 (H.B. 1675), Sec. 3.05, eff. June 14, 2013.
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 4, eff. September 1, 2019.

SUBCHAPTER C. POWERS AND DUTIES OF COMMISSIONER

Sec. 14.101. GENERAL DUTIES OF COMMISSIONER. The commissioner shall enforce this chapter, Subtitles B and C of Title 4, Chapter 393 with respect to a credit access business, and Chapter 394 in person or through an assistant commissioner, examiner, or other employee of the office.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 3, eff. January 1, 2012.
Acts 2013, 83rd Leg., R.S., Ch. 63 (H.B. 2548), Sec. 2, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 196 (S.B. 560), Sec. 3, eff. September 1, 2017.

Sec. 14.102. EDUCATIONAL AND DEBT COUNSELING PROGRAMS. The commissioner shall coordinate, encourage, and assist public and private agencies, organizations, groups, and consumer credit institutions in developing and operating voluntary educational and debt counseling programs designed to promote prudent and beneficial use of consumer credit by residents of this state.

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

Sec. 14.1025. FINANCIAL LITERACY PROGRAM INFORMATION. (a) In this section:

(1) "Financial literacy" means proficiency at managing personal finances.

(2) "Health and human services agencies" has the meaning assigned by Section 531.001, Government Code.

(b) The commissioner shall collect information on programs, including classes, and other resources available to the public that focus on teaching financial literacy, compile the information into a one-page document, and post the document on the office's Internet website.

(c) A health and human services agency shall ensure that the document under Subsection (b) is offered to persons who receive services from the agency at locations at which those persons frequently access services provided by the agency.

(d) The commissioner shall periodically update the information contained in the document described by Subsection (b).

Added by Acts 2011, 82nd Leg., R.S., Ch. 538 (H.B. 2615), Sec. 1, eff. September 1, 2011.

Sec. 14.103. CONSUMER PROTECTION PROGRAMS. The commissioner, through the division of consumer protection, shall coordinate, encourage, and assist public and private agencies, organizations, groups, and consumer protection institutions in developing and operating voluntary educational consumer protection programs designed to promote prudent and informed consumer action by residents of this state.

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

Sec. 14.104. LENDER CONTRACTS. A written contract of an authorized lender subject to regulation by the office must contain the name, mailing address, and telephone number of the office.

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

Sec. 14.105. GIFTS AND GRANTS. (a) The commissioner may accept money, gifts, or grants on behalf of the state for a purpose related to a consumer credit educational opportunity or to assist a local government in the exercise of its police power unless the acceptance is prohibited by Subsection (b) or other law. Acceptance and use of money under this subsection must be approved by the finance commission.

(b) The commissioner may not accept or use money offered by:

(1) a person for investigating or prosecuting a matter; or

(2) a person who is affiliated with an industry that is regulated by the finance commission.

(c) Money received under Subsection (a) may be appropriated only for the purpose for which the money was given.

(d) The commissioner is not prohibited by Subsection (b) from receiving and using money from a person under the jurisdiction of the commissioner if the receipt and use is expressly authorized by other law.

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

Sec. 14.106. INFORMATION REGARDING EMPLOYMENT REQUIREMENTS. The commissioner or the commissioner's designee shall provide to agency employees, as often as necessary, information regarding the requirements for employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state employees.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1235, Sec. 6, eff. Sept. 1, 2001.

Sec. 14.107. FEES. (a) The finance commission shall establish reasonable and necessary fees for carrying out the commissioner's powers and duties under this chapter, Title 4, Chapter 393 with respect to a credit access business, and Chapters 371, 392, and 394 and under Chapters 51, 302, 601, and 621, Business & Commerce Code.

(b) The finance commission by rule shall set the fees for licensing and examination, as applicable, under Chapter 393 with respect to a credit access business or Chapter 342, 347, 348, 351, 353, or 371 at amounts or rates necessary to recover the costs of administering those chapters. The rules may provide that the amount of a fee charged to a license holder is based on the volume of the license holder's regulated business and other key factors. The commissioner may provide for collection of a single fee for the term of the license from a person licensed under Subchapter G of Chapter 393 or Chapter 342, 347, 348, 351, or 371. The fee must include amounts due for both licensing and examination.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 18, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1235, Sec. 7, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.15, eff. April 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 2, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 4, eff. January 1, 2012.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 5, eff. September 1, 2019.

Sec. 14.108. INTERPRETATIONS OF LAW. (a) The commissioner may issue an interpretation of this chapter or Subtitle A or B, Title 4, after approval of the interpretation by the finance commission.

(b) The provisions of Chapter 2001, Government Code, that relate to the adoption of an administrative rule do not apply to the issuance of an interpretation under this section.

(c) The commissioner shall publish in the Texas Register, in a

form prescribed by the finance commission, a request for an interpretation not later than the 10th day after the date on which the commissioner receives the request.

(d) An interpretation approved by the finance commission shall be published in the Texas Register, in a form prescribed by the finance commission, not later than the 10th day after the date on which the finance commission has approved the interpretation.

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

Sec. 14.109. USE OF THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY. (a) In this section, "Nationwide Mortgage Licensing System and Registry" or "nationwide registry" means a licensing system developed and maintained by the Conference of State Bank Supervisors and an affiliated organization to manage mortgage licenses and other financial services licenses or a successor registry.

(b) This section applies only to:

(1) this chapter; and

(2) Chapter 342, 348, 351, 393, or 394.

(c) The commissioner may require that a person submit through the Nationwide Mortgage Licensing System and Registry in the form and manner prescribed by the commissioner and acceptable to the registry any information or document or payment of a fee required to be submitted to the commissioner under:

(1) a chapter to which this section applies; or

(2) rules adopted under the chapter.

(d) The commissioner may use the nationwide registry as a channeling agent for obtaining information required for licensing or registration purposes under a chapter listed in Subsection (b)(2) or rules adopted under the chapter, including:

(1) criminal history record information from the Federal Bureau of Investigation, the United States Department of Justice, or any other agency or entity at the commissioner's discretion;

(2) information related to any administrative, civil, or criminal findings by a governmental jurisdiction; and

(3) information requested by the commissioner under Section 342.101(a)(4), 348.502(a)(3), 351.101(a)(4), 393.604(a)(5), or 394.204(c)(8).

Added by Acts 2013, 83rd Leg., R.S., Ch. 737 (S.B. 232), Sec. 1, eff. September 1, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 943 (H.B. 1721), Sec. 1, eff. September 1, 2013.

Sec. 14.110. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION. (a) The finance commission by rule shall develop a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of rules by the finance commission applicable to the office; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the office's jurisdiction.

(b) The procedures applicable to the office relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The office shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 6, eff. September 1, 2019.

Sec. 14.111. ADVISORY COMMITTEES. (a) The commissioner may appoint advisory committees to assist the office and commissioner in performing their duties.

(b) The commissioner shall specify each committee's purpose, powers, and duties and shall require each committee to report to the commissioner or office in the manner specified by the commissioner concerning the committee's activities and the results of its work.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 6, eff.

September 1, 2019.

Sec. 14.112. LICENSING AND REGISTRATION TERMS. (a) The finance commission by rule shall prescribe the licensing or registration period for licenses and registrations issued under Chapters 342, 345, 347, 348, 351, 352, 353, 371, 393, and 394 of this code and Chapter 1956, Occupations Code, not to exceed two years.

(b) In adopting rules under Subsection (a), the finance commission shall set terms for licenses that comply with Chapter 180 and the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

(c) If the finance commission prescribes the term of a license or registration under Subsection (a) for a period other than one year, the commissioner shall prorate the applicable fee required under a chapter specified in Subsection (a) as necessary to reflect the term of the license or registration.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 6, eff. September 1, 2019.

SUBCHAPTER D. CRIMINAL HISTORY RECORD INFORMATION

Sec. 14.151. OBTAINING INFORMATION. (a) The commissioner or an assistant commissioner, examiner, or other employee of the office shall obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency relating to a person described by Section 411.095(a)(1), Government Code.

(b) For an applicant for a license or registration, license holder, or registrant that is a business entity, the criminal history record information requirement of this section applies to an officer, director, owner, or employee of the entity or another person having a substantial relationship with the entity.

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

Acts 2015, 84th Leg., R.S., Ch. 256 (S.B. 1075), Sec. 2, eff. September 1, 2015.

Sec. 14.152. FINGERPRINT REQUIREMENT; PENALTY. The commissioner may refuse to grant a license or registration to, or may suspend or revoke the license or registration of, an applicant, license holder, or registrant described by Section 411.095(a)(1), Government Code, who fails to provide, on request, a complete set of legible fingerprints on a fingerprint card format approved by the Department of Public Safety and the Federal Bureau of Investigation.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 256 (S.B. 1075), Sec. 3, eff. September 1, 2015.

Sec. 14.153. ACTION BY LAW ENFORCEMENT AGENCIES. (a) The commissioner shall send fingerprints and other identification information to the Department of Public Safety to be retained by that department.

(b) The Department of Public Safety shall use the information to perform a search of the state criminal history files and shall report the findings to the office.

(c) The Department of Public Safety shall send fingerprints and other identification information to the Federal Bureau of Investigation so that the bureau can perform a search of its criminal history files.

(d) The Department of Public Safety shall notify the office of activity reported to the crime records division that identifies a person with a record maintained under this subchapter.

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

Sec. 14.154. CONFIDENTIALITY. (a) Criminal history record information received by the office is confidential and is for the exclusive use of the office.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 256 , Sec. 7, eff. September 1, 2015.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 256 (S.B. 1075), Sec. 7, eff.

September 1, 2015.

Sec. 14.155. DISCLOSURE. (a) The office may not release or disclose criminal history record information obtained from the Department of Public Safety, Federal Bureau of Investigation Identification Division, or other law enforcement agency, except as provided by Section 411.095(b), Government Code.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 256 , Sec. 7, eff. September 1, 2015.

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

Acts 2015, 84th Leg., R.S., Ch. 256 (S.B. 1075), Sec. 4, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 256 (S.B. 1075), Sec. 5, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 256 (S.B. 1075), Sec. 7, eff. September 1, 2015.

Sec. 14.156. RECOVERY OF COSTS. In addition to an investigation fee paid to the commissioner by an applicant for a license or registration, the commissioner is entitled to recover from an applicant, license holder, or registrant the cost of processing an inquiry to determine whether the person has a criminal history record.

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

Acts 2015, 84th Leg., R.S., Ch. 256 (S.B. 1075), Sec. 6, eff. September 1, 2015.

Sec. 14.157. RULES. The finance commission shall adopt rules governing the custody and use of information obtained under this subchapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 19, eff. Sept. 1, 2001.

SUBCHAPTER E. INVESTIGATION AND ENFORCEMENT

Sec. 14.201. INVESTIGATION AND ENFORCEMENT AUTHORITY. Investigative and enforcement authority under this subchapter applies only to:

(1) this chapter;

(2) Subtitles B and C, Title 4;

(3) Chapter 393 with respect to a credit access business;

(4) Chapter 394; and

(5) Subchapter B, Chapter 1956, Occupations Code.

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

Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 5, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 63 (H.B. 2548), Sec. 3, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 196 (S.B. 560), Sec. 4, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 7, eff. September 1, 2019.

Sec. 14.2015. CONFIDENTIALITY OF CERTAIN INFORMATION. (a) Except as provided by Subsection (b), information or material obtained or compiled by the commissioner in relation to an examination or investigation by the commissioner or the commissioner's representative of a license holder, registrant, applicant, or other person under Subtitle B or C, Title 4, Subchapter G of Chapter 393, or Chapter 394 of this code or Subchapter B, Chapter 1956, Occupations Code, is confidential and may not be disclosed by the commissioner or an officer or employee of the office, including:

(1) information obtained from a license holder, registrant, applicant, or other person examined or investigated under Subtitle B or C, Title 4, Subchapter G of Chapter 393, or Chapter 394 of this code or Subchapter B, Chapter 1956, Occupations Code;

(2) work performed by the commissioner or the commissioner's representative on information obtained from a license holder, registrant, applicant, or other person for the purposes of an examination or investigation conducted under Subtitle B or C, Title

4, Chapter 393 with respect to a credit access business, or Chapter 394 of this code or Subchapter B, Chapter 1956, Occupations Code;

(3) a report on an examination or investigation of a license holder, registrant, applicant, or other person conducted under Subtitle B or C, Title 4, Chapter 393 with respect to a credit access business, or Chapter 394 of this code or Subchapter B, Chapter 1956, Occupations Code; and

(4) any written communications between the license holder, registrant, applicant, or other person, as applicable, and the commissioner or the commissioner's representative relating to or referencing an examination or investigation conducted under Subtitle B or C, Title 4, Chapter 393 with respect to a credit access business, or Chapter 394 of this code or Subchapter B, Chapter 1956, Occupations Code.

(b) The commissioner or the commissioner's representative may disclose the confidential information or material described by Subsection (a):

(1) to a department, agency, or instrumentality of this state or the United States if the commissioner considers disclosure to be necessary or proper to the enforcement of the laws of this state or the United States and in the best interest of the public;

(2) if the information was previously provided to or provided by the license holder, registrant, applicant, or other person, and the person consents to the release of the information or has published the information contained in the release;

(3) if the commissioner determines that release of the information is required for an administrative hearing; or

(4) to provide a summary of investigation information to the person who filed the complaint with the office.

Added by Acts 2009, 81st Leg., R.S., Ch. 1382 (S.B. 1620), Sec. 3, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1182 (H.B. 3453), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 6, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 63 (H.B. 2548), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 8.001, eff.

September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 196 (S.B. 560), Sec. 5, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 8, eff. September 1, 2019.

Sec. 14.2016. INFORMATION SHARING WITH DEPARTMENTS AND AGENCIES. To ensure consistent enforcement of law and minimization of regulatory burdens, the commissioner may share information, including criminal history or confidential information, relating to a license holder, registrant, applicant, or other person investigated or examined under the commissioner's authority with a department, agency, or instrumentality of this state, another state, or the United States if the commissioner considers the disclosure of the information to be necessary or proper to the enforcement of the laws of this state or the United States and in the best interest of the public. Information otherwise confidential remains confidential after the information is shared under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1182 (H.B. 3453), Sec. 2, eff. September 1, 2011.

Sec. 14.202. REQUEST FOR INFORMATION; INVESTIGATION AUTHORITY. On receipt of a written complaint or other reasonable cause to believe that a person is violating a statute listed by Section 14.201, the commissioner may:

(1) require the person to furnish information regarding a specific loan, retail transaction, or business practice to which the violation relates; and

(2) conduct an investigation to determine whether a violation exists.

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

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 9, eff. September 1, 2019.

Sec. 14.203. ISSUANCE OF SUBPOENA OR SUMMONS. (a) During an

investigation, the commissioner may issue a subpoena or summons that is addressed to a peace officer of this state and requires the attendance and testimony of a witness or the production of a document.

(b) A document that is necessary to continue the business of a person under investigation may not be removed from the office or place of business of that person, but the commissioner may:

(1) examine, or cause to be examined, the document at the office or place of business; and

(2) require a copy to be made of a part of the document related to a matter under investigation.

(c) A copy of a document made under Subsection (b)(2) must be verified by the affidavit of the person under investigation or by an officer of that person.

(d) On the commissioner's certification, a copy of a document made under Subsection (b)(2) is admissible in evidence in an:

(1) investigation or hearing under this subchapter or under a statute to which this subchapter applies; or

(2) appeal to the district court.

(e) To implement this section, the commissioner may sign a subpoena, administer an oath or affirmation, examine a witness, or receive evidence.

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

Sec. 14.204. ENFORCEMENT OF SUBPOENA; CONTEMPT. (a) If a person disobeys a subpoena or if a witness appearing before the commissioner refuses to testify, the commissioner may petition the district court of a jurisdiction in which the person or witness may be found, and the court on this petition may issue an order requiring the person or witness to obey the subpoena, testify, or produce a document relating to the matter in issue, as applicable. The court shall treat the application in the same manner as a motion in a civil suit.

(b) The court shall promptly set an application to enforce a subpoena under Subsection (a) for hearing and shall cause notice of the application and the hearing to be served on the person to whom the subpoena is directed. Notice may be served by a peace officer of this state.

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

Sec. 14.205. INVESTIGATION BY HEARING OFFICER. (a) During an investigation described by this subchapter, the commissioner may appoint a hearing officer to conduct the investigation.

(b) On appointment, a hearing officer has the same authority as the commissioner to conduct the investigation, except that the hearing officer may not issue an order on the subject of the investigation.

(c) The commissioner may consider the record of an investigation conducted before a hearing officer in the same manner and to the same extent as in a hearing before the commissioner.

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

Sec. 14.206. FEES AND EXPENSES. (a) The fee for serving a subpoena under this subchapter is the same as that paid a sheriff or constable for performing a similar service.

(b) A witness required to attend a hearing before the commissioner shall receive for each day's attendance a fee and a travel and transportation allowance as authorized by law or a rule adopted by the finance commission.

(c) A fee under Subsection (b) is not payable until the witness appears at the hearing.

(d) A disbursement made in payment of a fee under this section shall be included in, and paid in the same manner that is provided for, other expenses incurred in the administration and enforcement of the statutes to which this subchapter applies.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 20, eff. Sept. 1, 2001.

Sec. 14.207. IMPOSITION OF COSTS ON PARTIES. The commissioner may impose on a party in interest of record fees, expenses, or costs incurred in connection with a hearing or may divide the fee or expense among any or all interested parties as determined by the commissioner.

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

Sec. 14.208. INJUNCTION; APPEAL. (a) If the commissioner has reasonable cause to believe that a person is violating a statute to which this chapter applies, the commissioner, in addition to any other authorized action, may issue an order to cease and desist from the violation or an order to take affirmative action, or both, to enforce compliance.

(b) If a person against whom an order under this section is made requests a hearing not later than the 30th day after the date the order is served, the commissioner shall set and give notice of a hearing before a hearings officer. Chapter 2001, Government Code, governs the hearing and the right to judicial review in district court. Based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the commissioner by order may find whether a violation has occurred.

(c) If a hearing is not timely requested under Subsection (b), the order is considered final and becomes enforceable. The commissioner, after giving notice, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed $1,000 for each day of violation. In addition to any other remedy provided by law, the commissioner on relation of the attorney general may institute in district court a suit for injunctive relief and to collect an administrative penalty. A bond is not required of the commissioner with respect to injunctive relief granted under this section. In the action, the court may enter as proper an order awarding a preliminary or final injunction.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 95(1), eff. September 1, 2019.

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

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 4.01, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 10, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 95(1), eff. September 1, 2019.

Sec. 14.209. APPOINTMENT OF RECEIVER. (a) In addition to other remedies for the enforcement of a restraining order or injunction, the court in which an action is brought under Section 14.208(b) may impound and appoint a receiver for the defendant's property and business, including a document relating to the property or business, as the court considers reasonably necessary to prevent a violation through use of the property and business.

(b) On appointment and qualification, a receiver has the powers and duties of a receiver under Chapter 64, Civil Practice and Remedies Code.

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

SUBCHAPTER F. ADMINISTRATIVE PENALTY; RESTITUTION ORDER; ASSURANCE OF VOLUNTARY COMPLIANCE

Sec. 14.251. ASSESSMENT OF PENALTY; RESTITUTION ORDER. (a) The commissioner may assess an administrative penalty against a person who knowingly and wilfully violates or causes a violation of this chapter, Chapter 394, or Subtitle B, Title 4, or a rule adopted under this chapter, Chapter 394, or Subtitle B, Title 4.

(a-1) The commissioner shall assess an administrative penalty against a credit access business who knowingly and wilfully violates or causes a violation of Chapter 393, or a rule adopted under Chapter 393.

(b) The commissioner may order the following businesses or other persons to pay restitution to an identifiable person:

(1) a person who violates or causes a violation of this chapter, Chapter 394, or Subtitle B, Title 4, or a rule adopted under this chapter, Chapter 394, or Subtitle B, Title 4;

(2) a credit access business who violates or causes a violation of Chapter 393 or a rule adopted under Chapter 393; or

(3) a person who violates or causes a violation of Subchapter B, Chapter 1956, Occupations Code, or a rule adopted under that subchapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.29, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 7, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 63 (H.B. 2548), Sec. 5, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 196 (S.B. 560), Sec. 6, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 11, eff. September 1, 2019.

Sec. 14.252. AMOUNT OF PENALTY. (a) The commissioner may assess an administrative penalty for a violation in an amount not to exceed $1,000 for each day of the violation.

(b) The aggregate amount of penalties under this subchapter that the commissioner may assess against a person during one calendar year may not exceed the lesser of:

(1) $100,000; or

(2) an amount that is equal to the greater of five percent of the net worth of the creditor or $5,000.

(c) In determining the amount of an administrative penalty, the commissioner shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act;

(2) the extent of actual or potential harm to a third party;

(3) the history of violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

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

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 4.03, eff. September 1, 2005.

Sec. 14.253. REPORT ON VIOLATION. If the commissioner determines that a violation occurred, the commissioner may issue a report that states:

(1) the facts on which the determination is based; and

(2) the commissioner's recommendation on imposition of a penalty, including a recommendation on the amount of the penalty.

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

Sec. 14.254. NOTICE OF REPORT ON VIOLATION AND PENALTY RECOMMENDATION. (a) Not later than the 14th day after the date on which a report is issued, the commissioner shall give written notice of the report by certified mail to the person charged with committing or causing the violation.

(b) The notice must:

(1) include a brief summary of the alleged violation;

(2) include a statement of the amount of the recommended penalty; and

(3) inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

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

Sec. 14.255. RESPONSE OF PERSON RECEIVING NOTICE. Not later than the 20th day after the date on which a person receives notice under Section 14.254, the person may:

(1) accept in writing the determination and recommended penalty of the commissioner; or

(2) make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

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

Sec. 14.256. ACCEPTANCE OF PENALTY; DEFAULT. If a person accepts the determination and recommended penalty of the commissioner or fails to make a timely written request for a hearing, the commissioner by order shall approve the determination and impose the recommended penalty.

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

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 12, eff. September 1, 2019.

Sec. 14.257. HEARING ON PENALTY; ORDER. (a) If a person makes a timely written request for a hearing, the commissioner shall set a hearing and give notice of the hearing to the person by certified mail.

(b) The hearing shall be held by a hearings officer who shall make findings of fact and conclusions of law and promptly issue a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(c) According to the findings of fact, conclusions of law, and proposal for a decision, the commissioner by order may find:

(1) that a violation has occurred and impose a penalty; or

(2) a violation has not occurred.

(d) Notice of the commissioner's order, given to the person under Chapter 2001, Government Code, must include a statement of the person's right to judicial review of the order.

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

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 13, eff. September 1, 2019.

Sec. 14.258. STAY OF PENALTY; SUIT BY ATTORNEY GENERAL. (a) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the commissioner to contest the affidavit as provided by those rules.

(b) The attorney general may sue to collect the penalty.

(c) A court that sustains the occurrence of a violation may uphold or reduce the amount of the administrative penalty and order the person to pay that amount.

(d) A court that does not sustain the occurrence of a violation shall order that no penalty is owed.

(e) If a person has paid a penalty and a court in a final judgment reduces or does not uphold the amount, the court shall order that the appropriate amount plus accrued interest be remitted to the

person. The interest rate is the rate authorized by Chapter 304, and interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 4.04, eff. September 1, 2005.

Sec. 14.259. RECOVERY OF COSTS. In addition to the administrative penalty or restitution amount, the court may authorize the commissioner to recover from a person who pays an administrative penalty or restitution amount, or both, reasonable expenses incurred in obtaining the ordered amount, including the cost of investigation, witness fees, and deposition expenses.

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

Sec. 14.260. ADMINISTRATIVE PROCEDURE ACT. A proceeding under this subchapter is subject to Chapter 2001, Government Code.

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

Sec. 14.261. ACCEPTANCE OF ASSURANCE. (a) In administering this chapter, the commissioner may accept assurance of voluntary compliance from a person who is engaging in or has engaged in an act or practice in violation of:

(1) this chapter or a rule adopted under this chapter;

(2) Chapter 393, if the person is a credit access business, or Chapter 394; or

(3) Subtitle B, Title 4, or a rule adopted under Subtitle B, Title 4.

(b) The assurance must be in writing and be filed with the commissioner.

(c) The commissioner may condition acceptance of an assurance of voluntary compliance on the stipulation that the person offering the assurance restore to a person in interest money that may have been acquired by the act or practice described by Subsection (a).

(d) The finance commission may adopt rules to establish the form of the assurance or require certain information be contained in an assurance.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 4.05, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 8, eff. January 1, 2012.
Acts 2013, 83rd Leg., R.S., Ch. 63 (H.B. 2548), Sec. 6, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 196 (S.B. 560), Sec. 7, eff. September 1, 2017.

Sec. 14.262. EFFECT OF ASSURANCE. (a) An assurance of voluntary compliance is not an admission of a violation of:
(1) this chapter or a rule adopted under this chapter;
(2) Chapter 393 with respect to a credit access business or Chapter 394; or
(3) Subtitle B, Title 4, or a rule adopted under Subtitle B, Title 4.
(b) Unless an assurance of voluntary compliance is rescinded by agreement or voided by a court for good cause, a subsequent failure to comply with the assurance is prima facie evidence of a violation of:
(1) this chapter or a rule adopted under this chapter;
(2) Chapter 393 with respect to a credit access business or Chapter 394; or
(3) Subtitle B, Title 4, or a rule adopted under Subtitle B, Title 4.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 4.05, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 9, eff. January 1, 2012.
Acts 2013, 83rd Leg., R.S., Ch. 63 (H.B. 2548), Sec. 7, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 196 (S.B. 560), Sec. 8, eff. September 1, 2017.

Sec. 14.263. REOPENING. A matter closed by the filing of an assurance of voluntary compliance may be reopened at any time.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 4.05, eff. September 1, 2005.

Sec. 14.264. RIGHT TO BRING ACTION NOT AFFECTED. (a) An assurance of voluntary compliance does not affect the right of an individual to bring an action, except as provided in Chapter 349 and except that the right of an individual in relation to money received according to a stipulation under Section 14.261(c) is governed by the terms of the assurance.

(b) A person entering into an assurance of voluntary compliance may, not later than the 60th day after the date of filing of the assurance, correct the violation under Section 349.201. Amounts paid as restitution and other acts taken in accordance with an assurance of voluntary compliance shall be considered for purposes of determining whether the obligor has made a correction under Subchapter C, Chapter 349. With respect to corrections of violations or possible violations relating to matters addressed in the assurance of voluntary compliance, the date of filing of the assurance is considered to be the date of:

(1) actual discovery of the violation or possible violation;

(2) written notice; and

(3) filing of the action alleging the violation.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 4.05, eff. September 1, 2005.

SUBCHAPTER G. JUDICIAL REVIEW

Sec. 14.301. APPEAL OF FINAL DECISION OF COMMISSIONER. A party in interest aggrieved by a final decision of the commissioner is entitled to judicial review.

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

Sec. 14.302. APPEAL OF LICENSE WITHHOLDING OR REVOCATION. An appeal of a decision of the commissioner refusing to grant a license to an applicant or revoking the license of a license holder shall be under the substantial evidence rule as provided by Chapter 2001, Government Code.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1235, Sec. 8, eff. Sept. 1, 2001.

Sec. 14.303. STAY OF ORDER PENDING APPEAL. On a showing of good cause, the commissioner or the reviewing court may enter an order staying the effect of a final decision of the commissioner pending appeal by a party in interest.

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

CHAPTER 15. CREDIT UNION COMMISSION AND DEPARTMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 15.001. DEFINITIONS. (a) In this chapter, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) The definitions provided by Section 121.002 apply to this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.05(a), eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 1, eff. September 1, 2009.

SUBCHAPTER B. DEPARTMENT

Sec. 15.101. COMPOSITION OF DEPARTMENT. The department is composed of:

(1) the commission;

(2) the commissioner; and

(3) other department officers and employees.

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

Sec. 15.102. REGULATION OF CREDIT UNIONS. The department shall supervise and regulate credit unions as provided by this chapter and Subtitle D, Title 3.

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

Sec. 15.103. STUDY OF STATUTES. The department periodically shall comprehensively study the statutes of this state as they pertain to credit union operations.

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

SUBCHAPTER C. COMPOSITION OF COMMISSION

Sec. 15.201. APPOINTMENT; TERMS. (a) The commission is composed of nine members appointed by the governor with the advice and consent of the senate.

(b) Commission members serve staggered terms of six years, with the terms of one-third of the members expiring February 15 of each odd-numbered year.

(c) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.06(a), eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 2, eff. September 1, 2009.

Sec. 15.202. GENERAL QUALIFICATIONS OF COMMISSION MEMBERS. (a) No two commission members may be residents of the same state senatorial district.

(b) A person may not be a member of the commission if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the financial institutions field; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the financial institutions field.

(c) A person may not be a member of the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.05(b), eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 3, eff. September 1, 2009.

Sec. 15.203. QUALIFICATIONS OF INDUSTRY COMMISSION MEMBERS. (a) Four commission members must be individuals who:

(1) have five years or more of active experience as a director, officer, or committee member of a credit union that:

(A) is organized and doing business in this state under Subtitle D, Title 3, or the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.); and

(B) has its principal office in this state; and

(2) are engaged in exercising the powers and duties of a director, officer, or committee member of such a credit union.

(b) Experience as a commissioner, deputy commissioner, or examiner is equivalent to the experience required by Subsection (a).

(c) Not more than one individual from a federal credit union may serve on the commission at any time.

(d) An individual who ceases to be engaged in exercising the powers and duties prescribed by this section for a period exceeding 90 days becomes ineligible to serve as a commission member, and the individual's position on the commission becomes vacant.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.05(c), eff. Sept. 1, 1999.

Sec. 15.204. QUALIFICATIONS OF PUBLIC COMMISSION MEMBERS. (a)

Five commission members must be representatives of the public. A person is not eligible for appointment as a public member of the commission if the person or the person's spouse:

(1) is employed by or participates in managing or directing:

(A) a financial institution; or

(B) an organization, other than a financial institution, regulated by or receiving money from a financial institution regulatory agency;

(2) has, other than as a member or customer, a financial interest in:

(A) a financial institution; or

(B) an organization, other than a financial institution, regulated by or receiving money from a financial institution regulatory agency; or

(3) uses or receives a substantial amount of tangible goods, services, or money from the department, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

(b) The governor shall appoint public commission members on the basis of recognized business ability.

(c) In this section, "financial institution" includes an institution such as a credit union, bank, savings bank, or savings and loan association.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.05(d), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 87, Sec. 1, eff. Sept. 1, 1999.

Sec. 15.2041. TRAINING PROGRAM. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the department;

(2) the programs, functions, rules, and budget of the department;

(3) the results of the most recent formal audit of the department;

(4) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest;

(5) any applicable ethics policies adopted by the department or the Texas Ethics Commission; and

(6) the basic principles and responsibilities of credit union management.

(c) A person appointed to the commission is entitled to reimbursement under Section 15.207, as if the person were a member of the commission, for travel expenses incurred in attending the training program, regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.07(a), eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(e), eff. September 1, 2009.

Sec. 15.205. VACANCIES. The office of a commission member becomes vacant:

(1) on the death, resignation, or removal of the member; or

(2) if the member ceases to have the qualifications required for service as a member.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.08(a), eff. Sept. 1, 1999.

Sec. 15.206. REMOVAL. (a) A ground for removal of a commission member by the governor exists if a member:

(1) neglects the member's duty;

(2) is incompetent; or

(3) commits fraudulent or criminal conduct.

(b) It is a ground for removal from the commission that a

member:

(1) does not have at the time of taking office the qualifications required by Sections 15.202, 15.203, and 15.204;

(2) does not maintain during service on the commission the applicable qualifications required by Sections 15.202, 15.203, and 15.204;

(3) is ineligible for membership under Section 15.202, 15.203, or 15.204;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the commission.

(c) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(d) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the commissioner shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.08(b), eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 5, eff. September 1, 2009.

Sec. 15.207. EXPENSES AND COMPENSATION OF COMMISSION MEMBERS. (a) A commission member may not receive compensation or a benefit because of the member's service on the commission except as provided by Subsection (b).

(b) For each day that a commission member engages in the business of the commission, the member is entitled to:

(1) per diem, including compensatory per diem;
(2) actual expenses for meals and lodging; and
(3) transportation expenses.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1317, Sec. 28(i), eff. September 1, 2009.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(i), eff. September 1, 2009.

Sec. 15.208. MATTER IN WHICH COMMISSION MEMBER HAS PERSONAL INTEREST. (a) A commission member may not act on a matter under the commission's consideration that directly affects a credit union of which the member is an officer, director, or member.

(b) The commission shall adopt rules relating to recusal of members, requiring that a member who has a personal or private interest in a measure, proposal, or decision pending before the commission shall publicly disclose the fact to the commission at a meeting held in compliance with Chapter 551, Government Code. The member may not vote or otherwise participate in the decision. The disclosure shall be entered into the minutes of the meeting.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.09(a), eff. Sept. 1, 1999.

Sec. 15.209. MEETINGS. (a) The commission shall hold at least two regular meetings each year.

(b) The chairman, the commissioner, or five commission members may call a special meeting of the commission.

(c) The commission shall adopt reasonable rules governing a meeting, including rules relating to the:
(1) time and place of a meeting;
(2) conduct of a meeting; and
(3) form of the minutes.

(d) The commission is subject to the:
(1) open meetings law, Chapter 551, Government Code; and
(2) administrative procedure law, Chapter 2001, Government Code.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.09(b), eff. Sept. 1, 1999.

Sec. 15.210. PRESIDING OFFICER. The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.09(c), eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 6, eff. September 1, 2009.

Sec. 15.211. SUIT FOR OFFICIAL ACT OR OMISSION. (a) The attorney general shall defend an action brought against a commission member or an officer or employee of the commission because of the person's official act or omission regardless of whether the individual is a member, officer, or employee of the commission at the time the action is initiated.

(b) A suit against the commission or its officers or employees may be brought only in Travis County.

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

Sec. 15.212. SUNSET PROVISION. The Credit Union Department and the Credit Union Commission are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department and commission are abolished September 1, 2021.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.04(b), eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 7, eff. September 1, 2009.

SUBCHAPTER D. COMMISSIONER AND OTHER EMPLOYEES OF COMMISSION

Sec. 15.301. COMMISSIONER. (a) The commission shall appoint a commissioner by affirmative vote of two-thirds of the membership of the commission.

(b) The commissioner serves at the will of the commission.

(c) The commissioner is an employee of the commission and is subject to the commission's orders and directions.

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

Sec. 15.302. QUALIFICATIONS OF COMMISSIONER. (a) The commissioner must have at least five years' practical experience in the operation of credit unions during the 10 years preceding the commissioner's appointment.

(b) The experience required by this section may consist of experience:

(1) in exercising the powers and duties of a director, officer, or committee member of a credit union; or

(2) in the employment of a credit union regulatory agency.

(c) A person may not be appointed commissioner if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the financial institutions field; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the financial institutions field.

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

Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 8, eff. September 1, 2009.

Sec. 15.303. DEPUTY COMMISSIONER. (a) Subject to the commission's approval, the commissioner may appoint a deputy commissioner, who must have the qualifications required of the commissioner.

(b) The deputy commissioner serves at the will of the commissioner and, at the commissioner's direction, may exercise the powers and prerogatives of the commissioner.

(c) The deputy commissioner is an employee of the commission and is subject to the commission's orders and directions.

(d) During the commissioner's absence or inability to act, the deputy commissioner shall perform the commissioner's duties.

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

Sec. 15.304. EXAMINERS. (a) The commissioner shall appoint a sufficient number of credit union examiners to perform fully the duties imposed by the laws of this state.

(b) Appointment of an examiner is subject to recruitment specifications and qualifications approved by the commission.

(c) An examiner is an employee of the commission and is subject to the commission's orders and directions.

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

Sec. 15.305. GENERAL COUNSEL. A person may not act as the general counsel to the commission or the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.05(e), eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 9, eff. September 1, 2009.

Sec. 15.306. OATH. Before assuming the duties of office, the commissioner, the deputy commissioner, each examiner, and each other officer or employee of the commission must take an oath of office approved by the commission.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 285, Sec. 8, eff. Sept. 1, 2003.

Sec. 15.307. OFFICERS OF COMMISSION AND DEPARTMENT. Each officer of the commission and department, except a commission member,

is an employee of the commission and is subject to the commission's orders and directions.

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

Sec. 15.309. INTRA-AGENCY CAREER LADDER. (a) The commissioner or a person designated by the commissioner shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for employees within the department.

(b) The program must require intra-agency posting of all non-entry-level positions concurrently with public posting.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.12(a), eff. Sept. 1, 1999.

Sec. 15.310. PERFORMANCE EVALUATION. (a) The commissioner or a person designated by the commissioner shall develop a system of annual performance evaluations that are based on documented employee performance.

(b) Merit pay for department employees must be based on the system established under this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.12(b), eff. Sept. 1, 1999.

Sec. 15.311. QUALIFICATIONS OF EMPLOYEES. A person may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the financial institutions field; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the financial institutions field.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.05(f), eff. Sept. 1,

1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 10, eff. September 1, 2009.

Sec. 15.312. INFORMATION PROVIDED TO MEMBERS AND EMPLOYEES. The commissioner or the commissioner's designee shall provide to members of the commission and to department employees, as often as necessary, information regarding their qualification for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.11(a), eff. Sept. 1, 1999.

Sec. 15.313. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The commissioner or a person designated by the commissioner shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that comply with requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the department workforce that meets federal and state law, including rules and regulations, and instructions adopted directly from that law;

(3) procedures by which a determination can be made about the extent of underuse in the department workforce of all persons for whom federal or state laws, including rules and regulations, and instructions adopted directly from that law, encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually and reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(3) be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.13(a), eff. Sept. 1, 1999.

SUBCHAPTER E. POWERS AND DUTIES OF COMMISSION AND COMMISSIONER

Sec. 15.401. SUPERVISION OF COMMISSIONER. The commission shall supervise, consult with, and advise the commissioner.

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

Sec. 15.4011. CREDIT UNION DEPARTMENT BUILDING. The commission shall have charge and control of the property known as the Credit Union Department Building and use of staff, equipment, and facilities of the department. The Credit Union Department Building refers to the property located in the city of Austin and titled in the name of the State of Texas for the use and benefit of the Credit Union Department, as described by deed recorded in Volume 6126, Page 27, of the Deed Records of Travis County, Texas.

Added by Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(f), eff. September 1, 2009.

Sec. 15.402. ADOPTION OF RULES. (a) The commission may adopt reasonable rules necessary to administer this chapter and to accomplish the purposes of Subtitle D, Title 3.

(b) In adopting rules under this section, the commission may regulate and classify credit unions according to criteria that the commission determines are appropriate and necessary to accomplish the purposes of this chapter and Subtitle D, Title 3, including the:

(1) character of field of membership;

(2) amount of assets;

(3) number of members; and

(4) financial condition.

(b-1) In adopting rules under this section, the commission shall consider the need to:

(1) promote a stable credit union environment;

(2) provide credit union members with convenient, safe, and competitive services;

(3) preserve and promote the competitive parity of credit unions with regard to other depository institutions consistent with the safety and soundness of credit unions; and

(4) promote or encourage economic development in this state.

(c) The commission by rule shall establish reasonable and necessary fees for the administration of this chapter and Subtitle D, Title 3.

(d) The presence or absence in this chapter or Subtitle D, Title 3, of a specific reference to rules regarding a particular subject does not enlarge or diminish the rulemaking authority provided by this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 157, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 533, Sec. 1, eff. Sept. 1, 2003.

Sec. 15.4021. RECEIPT OF PUBLIC COMMENTS; NOTICE OF COMMISSION ACTIVITIES. (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the department.

(b) The commission shall adopt rules providing for public notice of department activities.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.10(a), eff. Sept. 1, 1999.

Sec. 15.4022. RULES RELATING TO COMPETITIVE BIDDING AND ADVERTISING. (a) The commission may not adopt rules restricting competitive bidding or advertising by a credit union except to

prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the commission may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) relates to the size or duration of an advertisement by the credit union; or

(3) restricts the credit union's advertisement under a trade name.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.10(a), eff. Sept. 1, 1999.

Sec. 15.4023. SEPARATION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the commissioner and the staff of the department.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.10(a), eff. Sept. 1, 1999.

Sec. 15.4025. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of department rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the department's jurisdiction.

(b) The department's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those

procedures, as implemented by the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 11, eff. September 1, 2009.
Redesignated from Finance Code, Section 15.4024 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(11), eff. September 1, 2011.

Sec. 15.403. SUPERVISION AND REGULATION OF CREDIT UNIONS. (a) The commissioner shall supervise and regulate a credit union doing business in this state, other than a federal credit union, in accordance with this chapter and Subtitle D, Title 3, including rules adopted under this chapter and Subtitle D, Title 3.

(b) To the extent necessary to the department's authority to supervise and regulate credit unions under this chapter and Subtitle D, Title 3, the commissioner may require each credit union to conduct business in compliance with federal laws that apply to credit unions.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 1, eff. September 1, 2013.

Sec. 15.4031. CREDIT UNION COMMISSIONER HEARING. (a) The commissioner may convene a hearing to receive evidence and argument regarding any matter under this chapter or Subtitle D, Title 3, before the commissioner for decision or review. The hearing must be conducted under Chapter 2001, Government Code. A matter made confidential by law must be considered by the commissioner in a closed hearing.

(b) A hearing officer may conduct any hearing on behalf of the commissioner.

Added by Acts 2003, 78th Leg., ch. 533, Sec. 3, eff. Sept. 1, 2003.

Sec. 15.4032. EXAMINATION OF RELATED ENTITIES. (a) In accordance with rules adopted by the commission, the commissioner may

examine, to the same extent as if the services or activities were performed by a credit union on its own premises:

(1) a credit union service organization in which a credit union has a material interest;

(2) an organization engaged primarily in the business of managing one or more credit unions; and

(3) a third-party contractor providing electronic data processing, electronic fund transfers, or other member services on behalf of a credit union.

(b) The commissioner may collect a fee from an examined contractor or organization in connection with each examination to cover the cost of the examination or may collect that fee from the credit unions that use the examined contractor.

Added by Acts 2003, 78th Leg., ch. 533, Sec. 3, eff. Sept. 1, 2003.

Sec. 15.404. ADMINISTRATION AND ENFORCEMENT OF STATUTES AND RULES. The commissioner shall administer and enforce this chapter and Subtitle D, Title 3, and rules adopted under this chapter and Subtitle D, Title 3.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 4, eff. Sept. 1, 2003.

Sec. 15.4041. ISSUANCE OF INTERPRETIVE STATEMENTS. (a) The commissioner may issue interpretive statements containing matters of general policy to guide the public and credit unions, and may amend or repeal a published interpretive statement by issuing an amended statement or notice of repeal of a statement.

(b) An interpretive statement may be disseminated by newsletter, through an electronic medium such as the Internet, in a volume of statutes or related materials published by the commissioner or others, or by any other means reasonably calculated to notify persons affected by the interpretive statement. Notice of an amended or withdrawn statement must be disseminated in a substantially similar manner as the affected statement was originally disseminated.

Added by Acts 2003, 78th Leg., ch. 533, Sec. 5, eff. Sept. 1, 2003.

Sec. 15.4042. ISSUANCE OF OPINION. (a) In response to a specific request from a member of the public or the credit union industry, the commissioner may issue an opinion directly or through the deputy commissioner or a department attorney.

(b) If the commissioner determines that the opinion is useful for the general guidance of the public or credit unions, the commissioner may disseminate the opinion by newsletter, through an electronic medium such as the Internet, in a volume of statutes or related materials published by the commissioner or others, or by any other means reasonably calculated to notify persons affected by the opinion. A published opinion must be redacted to preserve the confidentiality of the requesting party unless the requesting party consents to be identified in the published opinion.

(c) The commissioner may amend or repeal a published opinion by issuing an amended opinion or notice of repeal of an opinion and disseminating the opinion or notice in a substantially similar manner as the affected opinion was originally disseminated. The requesting party may rely on the original opinion if:

(1) all material facts were originally disclosed to the commissioner;

(2) the safety and soundness of the affected credit union will not be endangered by further reliance on the original opinion; and

(3) the text and interpretation of relevant governing provisions of this chapter or Subtitle D, Title 3, have not been changed by legislative or judicial action.

Added by Acts 2003, 78th Leg., ch. 533, Sec. 5, eff. Sept. 1, 2003.

Sec. 15.4043. EFFECT OF INTERPRETIVE STATEMENT OR OPINION. An interpretive statement or opinion issued under this subchapter does not have the force of law and is not a rule for the purposes of Chapter 2001, Government Code, unless adopted by the commission as provided by Chapter 2001, Government Code. An interpretive statement or opinion is an administrative construction of this chapter or Subtitle D, Title 3, may be relied on by credit unions authorized to engage in business in this state, and is entitled to great weight if the construction is reasonable and does not conflict with this chapter or Subtitle D, Title 3.

Added by Acts 2003, 78th Leg., ch. 533, Sec. 5, eff. Sept. 1, 2003.

Sec. 15.4044. FEES. The department may charge a late fee against a credit union for late payment of its operating fees.

Added by Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 12, eff. September 1, 2009.

Sec. 15.405. LEGISLATIVE RECOMMENDATIONS. The commissioner shall report the department's legislative recommendations to the legislature for consideration.

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

Sec. 15.406. ATTENDANCE AT COMMISSION MEETINGS; VOTING. The commissioner shall attend meetings of the commission but may not vote at a meeting.

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

Sec. 15.407. OFFICIAL COMMITTEES. The chairman may appoint individuals who are not commission members to serve on official committees that are charged with evaluating industry methods or problems and presenting formal recommendations to the commission for possible action. The individuals appointed are entitled to reimbursement for reasonable and necessary expenses incidental to travel incurred in connection with the performance of official duties.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1158, Sec. 7, eff. Sept. 1, 2001.

Sec. 15.409. CONSUMER INFORMATION AND COMPLAINTS. (a) The commissioner shall:

(1) supervise the preparation of public interest information describing:

(A) functions of the department;

(B) procedures for filing and resolving complaints; and

(C) other matters of general interest relating to credit unions; and

(2) make the information prepared under Subdivision (1) available to the public and appropriate state agencies.

(b) The department shall maintain a system to promptly and efficiently act on complaints filed with the department. The department shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(c) The department shall make information available describing its procedures for complaint investigation and resolution.

(d) The department shall periodically notify the person filing the complaint and each person who is the subject of the complaint of the status of the complaint until final disposition.

(e) The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, telephone number, and Internet website of the department for the purpose of directing complaints to the department. The commission shall provide for that notification:

(1) on the Internet website of a credit union regulated under this chapter and Subtitle D, Title 3, if the credit union maintains a website;

(2) on a sign prominently displayed in the place of business of each credit union regulated under this chapter and Subtitle D, Title 3; and

(3) in any newsletter distributed by a credit union regulated under this chapter and Subtitle D, Title 3, if the credit union distributes a newsletter.

(f) The commission by rule may establish other methods by which credit unions that do not have an Internet website or do not distribute a newsletter may make the information described by Subsection (e) more readily available to credit unions' customers and service recipients.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.11(c), eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 13, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 2, eff. September 1, 2013.

Sec. 15.4091. ACCESS TO DEPARTMENT FACILITIES, PROGRAMS, AND SERVICES. (a) The department shall comply with federal and state laws related to program and facility accessibility.

(b) The commissioner shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the department's programs and services.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.11(d), eff. Sept. 1, 1999.

Sec. 15.410. SHARE AND DEPOSITOR INSURANCE PROTECTION. (a) The commission shall adopt, and the commissioner shall enforce, reasonable rules requiring a credit union to provide share and deposit insurance protection for credit union members and depositors.

(b) Rules adopted under this section must include authorization for and establishment of a share and deposit guaranty corporation or credit union under the department's exclusive regulation to enable the department to carry out the purposes of this chapter and Subtitle D, Title 3.

(c) A credit union may provide share and deposit insurance protection through another source approved by the department, including a program of the National Credit Union Administration.

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

Sec. 15.4105. ANNUAL REPORT TO MEMBERS. (a) The commission shall adopt, and the commissioner shall enforce, reasonable rules requiring a credit union regulated under this chapter and Subtitle D, Title 3, to provide an annual report to the credit union's members regarding the credit union's financial condition and management. The report must:

(1) include a current balance sheet;

(2) include an income and expense statement;

(3) contain the name and date of expiration of the term of office of each member serving on the board of directors;

(4) contain a brief description of any changes, since the preceding report was provided under this section, to the credit union's:

(A) management;

(B) bylaws;

(C) articles of incorporation;

(D) financial condition;

(E) membership size; and

(F) services offered; and

(5) contain any other information the commission considers necessary to ensure that credit union members are provided with basic knowledge of the credit union's financial condition and management.

(b) In adopting rules under this section, the commission must ensure that a credit union:

(1) updates the report before the credit union's annual organizational meeting;

(2) makes the report available to members throughout the year on the credit union's Internet website, if the credit union maintains a website; and

(3) provides the report to credit union members by an alternative method, including delivery at the credit union's annual organizational meeting, if the credit union does not have an Internet website.

Added by Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 14, eff. September 1, 2009.

Sec. 15.411. AGREEMENTS WITH OTHER REGULATORS. (a) The commissioner may enter into an agreement with any credit union supervisory agency regarding the examination or supervision of branch offices of credit unions chartered in this state doing business in other states and foreign credit unions doing business in this state. In lieu of conducting an examination or investigation required by this subtitle, the commissioner may accept examinations or reports from other credit union supervisory agencies. The acceptance of the examination or report does not waive any fee, charge, or revenue required to be paid by a credit union, including a foreign credit

union doing business in this state.

(b) The commissioner may enter into any cooperative arrangement with other credit union supervisory agencies to promote the effective regulation of state credit unions doing business across state lines, including contracting to use another agency's examiners, allowing for the use of examiners of this state by another agency, or collecting fees on behalf of or receiving payments through another agency.

Added by Acts 1999, 76th Leg., ch. 157, Sec. 4, eff. Sept. 1, 1999.

Sec. 15.4111. REGULATORY COORDINATION. To ensure effective coordination among and between the department and other state and federal agencies, the commissioner and those agencies may enter into cooperative, coordinating, or information-sharing agreements that are necessary or proper to enforce the state or federal laws applicable to credit unions.

Added by Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 3, eff. September 1, 2013.

Sec. 15.412. FILING GROUP RETURN WITH THE INTERNAL REVENUE SERVICE. (a) The commissioner may file a consolidated group return form with the Internal Revenue Service on behalf of all credit unions under the department's jurisdiction. To be included, each credit union must annually authorize the department in writing to include the credit union in the group return and must declare that the authorization and the financial information submitted for the purpose of compiling the group return are true and complete.

(b) The state is not liable for information contained in any form submitted. Each credit union is individually responsible for the accuracy, completeness, and timeliness of the information and for any potential tax liability or penalties that may accrue.

Added by Acts 1999, 76th Leg., ch. 157, Sec. 4, eff. Sept. 1, 1999.

Sec. 15.413. INTERPRETATION OF HOME EQUITY LENDING LAW. The commission may, on request of an interested person or on its own motion, issue interpretations of Sections 50(a)(5)-(7), (e)-(p), (t),

and (u), Article XVI, Texas Constitution. An interpretation under this section is subject to Chapter 2001, Government Code, and is applicable to lenders regulated by the commission. The Finance Commission of Texas and the commission shall attempt to adopt interpretations that are as consistent as feasible or shall state justification for any inconsistency.

Acts 2003, 78th Leg., ch. 1207, Sec. 2, eff. Sept. 13, 2003.

Sec. 15.414. AUTHORITY TO CONTRACT FOR PROFESSIONAL OR PERSONAL SERVICES. For the purpose of carrying out the powers, duties, and responsibilities of the department, the commissioner may negotiate, contract, or enter into an agreement for professional or personal services. The commission by rule shall adopt policies and procedures consistent with applicable state procurement practices for soliciting and awarding contracts under this section.

Added by Acts 2003, 78th Leg., ch. 533, Sec. 5, eff. Sept. 1, 2003.

Sec. 15.415. GIFTS OF MONEY OR PROPERTY. The department may accept money or property by gift, bequest, devise, or otherwise for any department purpose authorized by this chapter and Subtitle D, Title 3. A gift, bequest, or devise shall be used for the purposes specified by the grantor. The commission must approve acceptance and use of any gift, bequest, or devise under this section.

Added by Acts 2003, 78th Leg., ch. 533, Sec. 5, eff. Sept. 1, 2003. Renumbered from Finance Code, Section 15.413 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(26), eff. September 1, 2005.

Sec. 15.416. USE OF TECHNOLOGY. The commission shall implement a policy requiring the department to use appropriate technological solutions to improve the department's ability to perform its functions. The policy must ensure that the public is able to interact with the department on the Internet.

Added by Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 15, eff. September 1, 2009.

SUBCHAPTER F. RULES REGARDING USE OF ADVISORY COMMITTEES

Sec. 15.501. RULEMAKING AUTHORITY. (a) The commission shall adopt rules, in compliance with Section 15.407 and Chapter 2110, Government Code, regarding the purpose, structure, and use of advisory committees by the commission, including rules governing an advisory committee's:

(1) purpose, role, responsibility, and goals;

(2) size and quorum requirements;

(3) qualifications for membership, including experience requirements and geographic representation;

(4) appointment procedures;

(5) terms of service;

(6) training requirements; and

(7) duration.

(b) An advisory committee must be structured and used to advise the commission. An advisory committee may not be responsible for rulemaking or policymaking.

Added by Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 16, eff. September 1, 2009.

Sec. 15.502. PERIODIC EVALUATION. The commission shall by rule establish a process by which the commission shall periodically evaluate an advisory committee to ensure its continued necessity. The commission may retain or develop committees as appropriate to meet changing needs.

Added by Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 16, eff. September 1, 2009.

Sec. 15.503. COMPLIANCE WITH OPEN MEETINGS ACT.A commission advisory committee must comply with Chapter 551, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 16, eff. September 1, 2009.

CHAPTER 16. FINANCIAL REGULATORY AGENCIES: SELF-DIRECTED AND SEMI-INDEPENDENT

Sec. 16.001. DEFINITIONS. In this chapter:

(1) "Financial regulatory agency" means:

(A) the Texas Department of Banking;

(B) the Department of Savings and Mortgage Lending;

(C) the Office of Consumer Credit Commissioner; and

(D) the Credit Union Department.

(2) "Policy-making body" means:

(A) the Finance Commission of Texas for:

(i) the Texas Department of Banking;

(ii) the Department of Savings and Mortgage Lending; and

(iii) the Office of Consumer Credit Commissioner; and

(B) the Credit Union Commission for the Credit Union Department.

Added by Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(a), eff. September 1, 2009.

Sec. 16.002. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF FINANCIAL REGULATORY AGENCIES. Notwithstanding any other provision of law, a financial regulatory agency is self-directed and semi-independent as specified by this chapter. Any Act of the 81st Legislature that relates to a financial regulatory agency and that is inconsistent with the agency being self-directed and semi-independent may be implemented by the financial regulatory agency only on authorization by the policy-making body of the financial regulatory agency.

Added by Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(a), eff. September 1, 2009.

Sec. 16.003. BUDGET, REVENUES, AND EXPENSES. (a) A financial regulatory agency shall submit to the policy-making body of the financial regulatory agency a budget annually using generally accepted accounting principles. Notwithstanding any other provision of law, including the General Appropriations Act, the budget shall be

adopted and approved only by the policy-making body of the financial regulatory agency.

(b) A financial regulatory agency shall be responsible for all direct and indirect costs of the agency's existence and operation. The financial regulatory agency may not directly or indirectly cause the general revenue fund to incur any cost.

(c) Subject to any limitations in a financial regulatory agency's enabling legislation, a financial regulatory agency may set the amounts of fees, penalties, charges, and revenues required or permitted by statute or rule as necessary for the purpose of carrying out the functions of the financial regulatory agency and funding the budget adopted and approved under Subsection (a).

(d) All fees and funds collected by a financial regulatory agency and any funds appropriated to the financial regulatory agency shall be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company. The comptroller shall contract with the financial regulatory agency for the maintenance of the deposit accounts under terms comparable to a contract between a commercial banking institution and the institution's customers.

(e) Periodically, each financial regulatory agency shall submit to the agency's policy-making body, as directed by the policy-making body, a report of the receipts and expenditures of the financial regulatory agency.

(f) The fiscal year for a financial regulatory agency begins on September 1 and ends on August 31.

Added by Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(a), eff. September 1, 2009.

Sec. 16.004. AUDITS. This chapter does not affect the duty of the state auditor to audit a financial regulatory agency. The state auditor shall enter into a contract and schedule with each financial regulatory agency to conduct audits, including financial reports and performance audits. The financial regulatory agency shall reimburse the state auditor for all costs incurred in performing the audits and shall provide to the governor a copy of any audit performed.

Added by Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(a), eff. September 1, 2009.

Sec. 16.005. RECORDS; REPORTING REQUIREMENTS. (a) A financial regulatory agency shall keep financial and statistical information as necessary to disclose completely and accurately the financial condition and results of operations of the agency.

(b) Before the beginning of each regular session of the legislature, each financial regulatory agency shall submit to the legislature and the governor a report describing all of the agency's activities in the previous biennium. The report must include:

(1) an audit as required by Section 16.004;

(2) a financial report of the previous fiscal year, including reports on financial condition and results of operations;

(3) a description of all changes in fees imposed on regulated industries;

(4) a report on changes in the regulatory jurisdiction of the agency, including the number of chartered financial institutions, license holders, and registrants subject to the agency's jurisdiction and any changes in those figures; and

(5) a list of all new rules adopted or repealed.

(c) In addition to the reporting requirements of Subsection (b), not later than November 1 of each year, each financial regulatory agency shall submit to the governor, the committee of each house of the legislature that has jurisdiction over appropriations, and the Legislative Budget Board a report that contains:

(1) the salary for all financial regulatory agency personnel and the total amount of per diem expenses and travel expenses paid for all agency employees;

(2) the total amount of per diem expenses and travel expenses paid for each member of the agency's policy-making body, provided that only one report must be submitted regarding the Finance Commission of Texas;

(3) the agency's operating plan and annual budget; and

(4) a detailed report of all revenue received and all expenses incurred by the financial regulatory agency in the previous 12 months.

Added by Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(a), eff. September 1, 2009.

Sec. 16.006. ABILITY TO CONTRACT. (a) To carry out and

promote the objectives of this chapter, a financial regulatory agency may enter into contracts and do all other acts incidental to those contracts that are necessary for the administration of the agency's affairs and for the attainment of the agency's purposes, except as limited by Subsection (b).

(b) Any indebtedness, liability, or obligation of the financial regulatory agency incurred under this section may not:

(1) create a debt or other liability of this state or another entity other than the financial regulatory agency; or

(2) create any personal liability on the part of the members of the policy-making body or the body's or agency's employees.

Added by Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(a), eff. September 1, 2009.

Sec. 16.007. PROPERTY. A financial regulatory agency may:

(1) acquire by purchase, lease, gift, or any other manner provided by law and maintain, use, and operate any real, personal, or mixed property, or any interest in property, necessary or convenient to the exercise of the powers, rights, privileges, or functions of the financial regulatory agency;

(2) sell or otherwise dispose of any real, personal, or mixed property, or any interest in property, that the financial regulatory agency determines is not necessary or convenient to the exercise of the agency's powers, rights, privileges, or functions;

(3) construct, extend, improve, maintain, and reconstruct, or cause to construct, extend, improve, maintain, and reconstruct, and use and operate all facilities necessary or convenient to the exercise of the powers, rights, privileges, or functions of the financial regulatory agency; and

(4) borrow money, as may be authorized from time to time by an affirmative vote of a two-thirds majority of the policy-making body of the financial regulatory agency, for a period not to exceed five years if necessary or convenient to the exercise of the financial regulatory agency's powers, rights, privileges, or functions.

Added by Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(a), eff. September 1, 2009.

Sec. 16.008. SUITS. The office of the attorney general shall represent a financial regulatory agency in any litigation. The attorney general may assess and collect from the financial regulatory agency reasonable attorney's fees associated with any litigation under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(a), eff. September 1, 2009.

Sec. 16.009. POST-PARTICIPATION LIABILITY. (a) If a financial regulatory agency no longer has status under this chapter as a self-directed semi-independent financial regulatory agency for any reason, the agency shall be liable for any expenses or debts incurred by the agency during the time the agency was a self-directed semi-independent financial regulatory agency. The agency's liability under this section includes liability for any lease entered into by the agency. This state is not liable for any expense or debt covered by this subsection, and money from the general revenue fund may not be used to repay the expense or debt.

(b) If a financial regulatory agency no longer has status under this chapter as a self-directed semi-independent financial regulatory agency for any reason, ownership of any property or other asset acquired by the agency during the time the agency was a self-directed semi-independent financial regulatory agency, including unexpended fees in a deposit account in the Texas Treasury Safekeeping Trust Company, shall be transferred to this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(a), eff. September 1, 2009.

Sec. 16.010. DUE PROCESS; OPEN GOVERNMENT. A financial regulatory agency is:

(1) a governmental body for purposes of Chapters 551 and 552, Government Code; and

(2) a state agency for purposes of Chapters 2001 and 2005, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(a), eff. September 1, 2009.

Sec. 16.011. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM. Employees of the financial regulatory agencies are members of the Employees Retirement System of Texas under Chapter 812, Government Code, and the agencies' transition to independent status as provided by this chapter has no effect on their membership or any benefits under that system.

Added by Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(a), eff. September 1, 2009.

Sec. 16.012. GIFTS. (a) Notwithstanding any other law, a financial regulatory agency may not accept a gift, grant, or donation:

(1) from a party to an enforcement action; or

(2) to pursue a specific investigation or enforcement action.

(b) A financial regulatory agency must:

(1) report each gift, grant, or donation that the agency receives as a separate item in the agency's report required under Section 16.005(b); and

(2) include with the report a statement indicating the purpose for which each gift, grant, or donation was donated and used.

Added by Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(a), eff. September 1, 2009.

TITLE 3. FINANCIAL INSTITUTIONS AND BUSINESSES

SUBTITLE A. BANKS

CHAPTER 31. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 31.001. SHORT TITLE. This subtitle may be cited as the Texas Banking Act.

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

Sec. 31.002. DEFINITIONS. (a) In this subtitle:

(1) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with a bank or other company.

(2) "Bank" means a state or national bank. If the context requires, the term includes a bank as defined by Section 201.002(a)(4) that is organized under the laws of another state or country.

(3) "Bank holding company" has the meaning assigned by the Bank Holding Company Act of 1956 (12 U.S.C. Section 1841 et seq.) or a successor to that Act.

(4) "Banking" means the performance of the exclusive depository institution functions of accepting deposits and discounting loans and the performance of related activities that are not exclusive to banks or other depository institutions, including paying drafts or checks, lending money, and providing related financial services authorized by this subtitle.

(5) "Banking association" means a state bank that is organized under this subtitle as a corporation, authorized to issue shares of stock, and controlled by its shareholders.

(6) "Banking commissioner" means the banking commissioner of Texas or a person designated by the banking commissioner and acting under the banking commissioner's direction and authority.

(7) "Board" means the board of directors of, or a person or group of persons acting in a comparable capacity for, a state bank or other entity. As the context requires, the term includes the board of managers of a limited banking association.

(8) "Branch" means a location of a bank, other than the bank's home office, at which the bank engages the public in the business of banking. The term does not include:

(A) a drive-in facility located not more than 2,000 feet from the nearest wall of the home office or an approved branch office of the bank;

(B) a night depository;

(C) an electronic terminal;

(D) a deposit or loan production office as described by Section 32.204;

(E) a state or federally licensed armored car service or other courier service transporting items for deposit or payment, unless:

(i) the risk of loss of items in the custody of the service is borne by the employing bank; or

(ii) the items in the custody of the service are considered to be in customer accounts at the employing bank or federally insured through the employing bank;

(F) a location at which the bank offers exclusively nondepository financial products or services to the public, including financial, investment, or economic advisory services;

(G) a location that combines permissible non-branch functions or facilities; or

(H) another office or facility as provided by this subtitle or a rule adopted under this subtitle.

(9) "Capital" means:

(A) the sum of:

(i) the par value of all shares of the state bank having a par value that have been issued;

(ii) the consideration set by the board for all shares of the state bank without par value that have been issued, except a part of that consideration that:

(a) has been actually received;

(b) is less than all of that consideration; and

(c) the board, by resolution adopted not later than the 60th day after the date of issuance of those shares, has allocated to surplus with the prior approval of the banking commissioner; and

(iii) an amount not included in Subparagraphs (i) and (ii) that has been transferred to capital of the state bank, on the payment of a share dividend or on adoption by the board of a resolution directing that all or part of surplus be transferred to capital, minus each reduction made as permitted by law; less

(B) all amounts otherwise included in Paragraphs (A)(i) and (ii) that are attributable to the issuance of securities by the state bank and that the banking commissioner determines, after notice and an opportunity for hearing, should be classified as debt rather than equity securities.

(10) Repealed by Acts 2007, 80th Leg., R.S., Ch. 110, Sec. 14, eff. September 1, 2007.

(10-a) "Commercial activity" means an activity in which a bank holding company, financial holding company, national bank, or national bank financial subsidiary may not engage under United States

law.

(11) "Company" includes a bank, trust company, corporation, partnership, association, business trust, or another trust.

(12) "Conservator" means the banking commissioner or an agent of the banking commissioner exercising the powers and duties provided by Subchapter B, Chapter 35.

(13) "Control" means:

(A) the ownership of or ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, 25 percent or more of the outstanding shares of a class of voting securities of a bank or other company;

(B) the ability to control the election of a majority of the board of a bank or other company;

(C) the power to exercise, directly or indirectly, a controlling influence over the management or policies of the bank or other company as determined by the banking commissioner after notice and an opportunity for hearing; or

(D) the conditioning of the transfer of 25 percent or more of the outstanding shares of a class of voting securities of a bank or other company on the transfer of 25 percent or more of the outstanding shares of a class of voting securities of another bank or other company.

(14) "Department" means the Texas Department of Banking.

(15) "Deposit" means the establishment of a debtor-creditor relationship represented by the agreement of the deposit debtor to act as a holding, paying, or disbursing agent for the deposit creditor. The term:

(A) includes:

(i) an unpaid balance of money that is received by the deposit debtor in the usual course of business in exchange for conditional or unconditional credit to a commercial, checking, savings, or time account of the deposit creditor or the creditor's designee, or that is evidenced by a certificate of deposit or similar instrument, a certified check or draft drawn against a deposit account, or a letter of credit or traveler's check on which the deposit debtor is primarily liable, but excluding an obligation arising under Chapter 152;

(ii) money or credit given for money received by the deposit debtor in the usual course of business for a special purpose, including money:

(a) held as escrow money, as security for an obligation due to the deposit debtor or another person, or as security for a loan;

(b) left with a deposit debtor by a deposit creditor to meet maturing obligations that are not yet due; and

(c) held by the deposit debtor to meet an acceptance or letter of credit;

(iii) an outstanding draft, cashier's check, money order, or other officer's check issued by the deposit debtor in the usual course of business for any purpose, including payment for services, dividends, or purchases; and

(iv) an obligation that the finance commission by rule defines as a deposit liability, except that the term may not include money received for immediate application to reduction of an indebtedness; and

(B) does not include an obligation that this subtitle or finance commission rule determines not to be a deposit liability.

(16) "Depository institution" means an entity with the power to accept deposits under applicable law.

(17) "Discount" means the retention by a lender of advance interest from loan proceeds. The term does not include the purchase of a promissory note or similar instrument at less than its face value unless the party selling the note is liable on the note as a maker, endorser, or guarantor.

(18) "Drive-in facility" means a facility offering one or more banking services other than originating or establishing a lending or deposit relationship solely to persons who remain outside the facility.

(19) "Electronic terminal" means an electronic device, other than a telephone or modem operated by a customer of a depository institution, through which a person may initiate an electronic fund transfer, as defined by 15 U.S.C. Section 1693a(6). The term includes a point-of-sale terminal, automated teller machine, or cash dispensing machine.

(20) "Equity capital" means the amount by which the total assets of a state bank exceed the total liabilities of the bank.

(21) "Equity security" means:

(A) stock, other than adjustable rate preferred stock and money market (auction rate) preferred stock;

(B) a certificate of interest or participation in a

profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share or participation share, investment contract, voting-trust certificate, or partnership interest;

(C) a security immediately convertible at the option of the holder without payment of substantial additional consideration into a security described by this subdivision;

(D) a security carrying a warrant or right to subscribe to or purchase a security described by this subdivision; and

(E) a certificate of interest or participation in, temporary or interim certificate for, or receipt for a security described by this subdivision that evidences an existing or contingent equity ownership interest.

(22) "Federal savings association" means a savings and loan association organized under federal law.

(23) "Federal savings bank" means a savings bank organized under federal law.

(24) "Finance commission" means the Finance Commission of Texas.

(25) "Financial institution" means a bank, savings association, or savings bank maintaining an office, branch, or agency office in this state.

(26), (27) Repealed by Acts 1999, 76th Leg., ch. 344, Sec. 9.002(1), eff. May 29, 1999.

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

(29) "Hazardous condition" means:

(A) a refusal by a state bank to permit examination of its books, papers, accounts, records, or affairs by the banking commissioner;

(B) a circumstance or condition in which an unreasonable risk of substantial loss is threatened to the depositors, creditors, or shareholders of a state bank, including a circumstance or condition in which a state bank:

(i) has inadequate equity capital, or the adequacy of its equity capital is threatened;

(ii) has concentrated an excessive or unreasonable portion of its assets in a type or character of loan or investment;

(iii) violates or refuses to comply with this subtitle, another statute or rule applicable to state banks, or a

final and enforceable order of the banking commissioner;

(iv) is in a condition that renders the continuation of a particular business practice hazardous to the public or to its depositors and creditors;

(v) conducts business in an unsafe and unsound manner; or

(vi) is insolvent; or

(C) a violation by a state bank of a condition of its chartering or an agreement entered into between the bank and the banking commissioner or the department.

(30) "Home office" means a location registered with the banking commissioner as the bank's home office at which:

(A) the bank does business with the public;

(B) the bank keeps its corporate books and records; and

(C) at least one officer of the bank maintains an office.

(31) "Insolvent" means a circumstance or condition in which a state bank:

(A) is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities;

(B) has equity capital equal to two percent or less of its assets, as determined under regulatory accounting principles;

(C) fails to maintain deposit insurance with the Federal Deposit Insurance Corporation or its successor if the banking commissioner determines that deposit insurance is necessary for the safe and sound operation of the bank;

(D) sells or attempts to sell substantially all of its assets or merges or attempts to merge substantially all of its assets or business with another entity other than as provided by Chapter 32; or

(E) attempts to dissolve or liquidate other than as provided by Chapter 36.

(32) "Investment security" means a marketable obligation evidencing indebtedness of a person in the form of a bond, note, debenture, or commonly known as an investment security, subject to further definition by rule adopted under this subtitle.

(33) "Limited banking association" means a state bank that is organized under this subtitle as a limited liability company,

authorized to issue participation shares, and controlled by its participants.

(34) "Loans and extensions of credit" means direct or indirect advances of money by a state bank to a person that are conditioned on the obligation of the person to repay the money or that are repayable from specific property pledged by or on behalf of the person. The term includes a contractual liability of a state bank to advance money to or on behalf of a person, indebtedness evidenced by a lease financing transaction in which the bank is lessor, an overdraft funded by the bank on behalf of a person except for an intraday or daylight overdraft, or another indebtedness not otherwise classified as an investment security. The term does not include accrued and unpaid interest or discounted interest.

(35) "Manager" means a person elected to the board of a limited banking association.

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

(37) "National bank" means a banking association organized under 12 U.S.C. Section 21.

(38) "Officer" means the presiding officer of the board, the principal executive officer, or another officer appointed by the board of a state bank or other company, or a person or group of persons acting in a comparable capacity for the state bank or other company.

(39) "Operating subsidiary" means a company for which a state bank has the ownership, ability, or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than 50 percent of the outstanding shares of each class of voting securities or its equivalent of the company.

(40) "Participant" means an owner of a participation share in a limited banking association.

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

(42) "Participation agreement" means the instrument stating the agreement among the participants of a limited banking association relating to the rights and duties of the participants, including:

(A) allocations of income, loss, deduction, credit, distributions, liquidation rights, redemption rights, and liabilities of participants;

(B) procedures for elections and voting by

participants; and

(C) any other matter not prohibited by or inconsistent with this subtitle.

(43) "Participation shares" means the units into which the proprietary interests of a limited banking association are divided or subdivided by means of classes, series, relative rights, or preferences.

(44) "Principal shareholder" means a person who owns or has the ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, 10 percent or more of the outstanding shares or participation shares of any class of voting securities of a bank or other company.

(45) "Regulatory accounting principles" means generally accepted accounting principles as modified by rules adopted under:

(A) this subtitle; or

(B) an applicable federal statute or regulation.

(46) "Savings association" means a state or federal savings association.

(47) "Savings bank" means a state or federal savings bank.

(48) "Shareholder" means an owner of a share in a banking association. As the context requires, the term includes a participant.

(49) "Shares" means the units into which the proprietary interests of a banking association are divided or subdivided by means of classes, series, relative rights, or preferences. As the context requires, the term includes participation shares.

(50) "State bank" means a banking association or limited banking association organized or reorganized under this subtitle, including an association organized under the laws of this state before September 1, 1995, with the express power to receive and accept deposits and possessing other rights and powers granted by this subtitle expressly or by implication. The term does not include a savings association, savings bank, or credit union. If the context requires, the term includes a bank as defined by Section 201.002(a)(4) that is organized under the laws of another state or country.

(51) "State savings association" means a savings and loan association organized under the laws of this state.

(52) "State savings bank" means a savings bank organized under or subject to Subtitle C. If the context requires, the term

includes a savings bank organized under the laws of another state.

(53) "Subsidiary" means a bank or company that is controlled by another person. The term includes a subsidiary of a subsidiary.

(54) "Supervisor" means the banking commissioner or an agent of the banking commissioner exercising the powers and duties specified in Subchapter B, Chapter 35.

(55) "Surplus" means the amount by which the assets of a state bank exceed its liabilities, capital, and undivided profits.

(55-a) "Third-party service provider" means a person who performs activities relating to the business of banking on behalf of a depository institution for the depository institution's customers or on behalf of another person directly engaged in providing financial services for the person's customers. The term:

(A) includes a person who:

(i) provides data processing services;

(ii) performs activities in support of the provision of financial services, including lending, transferring funds, fiduciary activities, trading activities, and deposit taking activities;

(iii) for the purpose of furnishing to third parties reports indicating a person's creditworthiness, credit standing, or credit capacity, regularly engages in the practice of assembling or evaluating, and maintaining, public record information and credit account information from persons who furnish that information regularly and in the ordinary course of business; or

(iv) provides Internet-related services, including web services, processing electronic bill payments, developing and maintaining mobile applications, system and software development and maintenance, and security monitoring; and

(B) does not include a provider of an interactive computer service or a general audience Internet or communications platform, except to the extent that the service or platform is specially designed or adapted for the business of banking and activities relating to the business of banking.

(56) "Unauthorized activity" means an act or practice in this state by a person without a charter, license, permit, registration, or other authority issued or granted by the banking commissioner or other appropriate regulatory authority for which such a charter, license, permit, registration, or other authority is

required.

(57) "Undivided profits" means the part of equity capital of a state bank equal to the balance of its net profits, income, gains, and losses since the date of its formation, minus subsequent distributions to shareholders and transfers to surplus or capital under share dividends or appropriate board resolutions. The term includes amounts allocated to undivided profits as a result of a merger.

(58) "Voting security" means a share or other evidence of proprietary interest in a state bank or other company that has as an attribute the right to vote or participate in the election of the board of the state bank or other company, regardless of whether the right is limited to the election of fewer than all of the board members. The term includes a security that is convertible or exchangeable into a voting security.

(b) The definitions shall be liberally construed to accomplish the purposes of this subtitle.

(c) The finance commission by rule may adopt other definitions to accomplish the purposes of this subtitle.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.002, 9.002, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 528, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 14, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 217 (H.B. 944), Sec. 1, eff. May 25, 2007.

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 2, eff. September 1, 2007.

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

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 2, eff. June 14, 2013.

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

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

Sec. 31.003. BANKING RULES. (a) The finance commission may adopt rules to accomplish the purposes of this subtitle and Chapters 11, 12, and 13, including rules necessary or reasonable to:

(1) implement and clarify this subtitle and Chapters 11, 12, and 13;

(2) preserve or protect the safety and soundness of state banks;

(3) grant at least the same rights and privileges to state banks that are or may be granted to national banks domiciled in this state;

(4) recover the cost of maintaining and operating the department and the cost of enforcing this subtitle and other applicable law by imposing and collecting ratable and equitable fees for notices, applications, and examinations; and

(5) facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission.

(b) In adopting rules, the finance commission shall consider the need to:

(1) promote a stable banking environment;

(2) provide the public with convenient, safe, and competitive banking services;

(3) preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system; and

(4) allow for economic development in this state.

(c) The presence or absence in this subtitle or Chapter 11, 12, or 13 of a specific reference to rules regarding a particular subject does not enlarge or diminish the rulemaking authority provided by this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 2, eff. Sept. 1, 2001.

Sec. 31.004. UNAUTHORIZED BANKING. (a) Except as otherwise provided by law, a person other than a depository institution authorized to conduct business in this state may not conduct the business of banking or represent to the public that it is conducting the business of banking in this state.

(b) This section does not prohibit the continued operation of a bank, trust company, bank and trust company, or savings bank by:

(1) a person, partnership, trustee, or trustee operating under a common law declaration of trust who:

(A) was actively engaged in the operation of the institution on June 13, 1923; or

(B) operated the institution for any period of at least 20 years before June 13, 1923, and resumed operations of the institution not later than June 13, 1924; or

(2) a legal representative or successor of a person or entity described by Subdivision (1).

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

Sec. 31.005. IMPLYING THAT PERSON IS BANK. (a) A person may not use the term "bank," "bank and trust," or a similar term or a character, ideogram, phonogram, phrase, or foreign language word in its name, stationery, or advertising in a manner that would imply to the public that the person is engaged in the business of banking in this state.

(b) Subsection (a) does not apply to a depository institution or other entity organized under the laws of this state, another state, the United States, or a foreign sovereign state to the extent that the depository institution or other entity is:

(1) authorized under its charter or the laws of this state or the United States to use a term, word, character, ideogram, phonogram, or phrase prohibited by Subsection (a); and

(2) authorized by the laws of this state or the United States to conduct the activities in which it is engaged in this state.

(c) A person violating this section is subject to an enforcement action initiated by the banking commissioner under Subchapter C, Chapter 35, except that the maximum administrative penalty under Section 35.211 for violation involving only Subsection (a) is $500 for each day the violation continues.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.003, eff. Sept. 1, 1999.

Sec. 31.006. LIABILITY OF DEPOSITORY INSTITUTION DIRECTORS AND PERSONNEL. (a) The provisions of the Business Organizations Code regarding liability, defenses, and indemnification of a director, officer, agent, or employee of a corporation apply to a director, officer, agent, or employee of a depository institution in this state. Except as limited by those provisions, a disinterested director, officer, or employee of a depository institution may not be held personally liable in an action seeking monetary damages arising from the conduct of the depository institution's affairs unless the damages resulted from the gross negligence or wilful or intentional misconduct of the person during the person's term of office or service with the depository institution.

(b) A director, officer, or employee of a depository institution is disinterested with respect to a decision or transaction if:

(1) the person fully discloses any interest in the decision or transaction and does not participate in the decision or transaction; or

(2) the decision or transaction does not involve any of the following:

(A) personal profit for the person through dealing with the depository institution or usurping an opportunity of the depository institution;

(B) buying or selling an asset of the depository institution in a transaction in which the person has a direct or indirect pecuniary interest;

(C) dealing with another depository institution or other person in which the person is a director, officer, or employee or otherwise has a significant direct or indirect financial interest; or

(D) dealing with a family member of the person.

(c) A director or officer who, in performing the person's duties and functions, acts in good faith and reasonably believes that reliance is warranted is entitled to rely on information, including an opinion, report, financial statement or other type of statement or financial data, decision, judgment, or performance, prepared, presented, made, or rendered by:

(1) one or more directors, officers, or employees of the depository institution, or of an entity under joint or common control with the depository institution, who the director or officer

reasonably believes merit confidence;

(2) legal counsel, a public accountant, or another person who the director or officer reasonably believes merits confidence; or

(3) a committee of the board of which the director is not a member.

(d) In this section, "family member" means a person's:

(1) spouse;

(2) minor child; or

(3) adult child who resides in the person's home.

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. 3, eff. September 1, 2007.

Sec. 31.007. EXEMPTION OF BANK DIRECTORS AND PERSONNEL FROM SECURITIES LAW.

Text of subsection effective until January 1, 2022

(a) An officer, director, or employee of a bank that has its main office or a branch located in this state with fewer than 500 shareholders or of a bank holding company with fewer than 500 shareholders that controls a bank that has its main office or a branch located in this state is exempt from the registration and licensing provisions of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) with respect to that person's participation in a transaction, including a sale, involving securities issued by:

(1) the bank or bank holding company of which that person is an officer, director, or employee;

(2) a bank holding company that controls the bank of which that person is an officer, director, or employee; or

(3) a bank controlled by the bank holding company of which that person is an officer, director, or employee.

Text of subsection effective on January 1, 2022

(a) An officer, director, or employee of a bank that has its main office or a branch located in this state with fewer than 500 shareholders or of a bank holding company with fewer than 500 shareholders that controls a bank that has its main office or a

branch located in this state is exempt from the registration and licensing provisions of The Securities Act (Title 12, Government Code) with respect to that person's participation in a transaction, including a sale, involving securities issued by:

(1) the bank or bank holding company of which that person is an officer, director, or employee;

(2) a bank holding company that controls the bank of which that person is an officer, director, or employee; or

(3) a bank controlled by the bank holding company of which that person is an officer, director, or employee.

(b) A person may not be compensated for services performed under the exemption provided by this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.004, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 4, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.11, eff. January 1, 2022.

SUBCHAPTER B. REGULATION OF BANKING BY BANKING COMMISSIONER

Sec. 31.101. GENERAL DUTIES OF BANKING COMMISSIONER. The banking commissioner shall:

(1) supervise and regulate, as provided by this subtitle, Subtitles F and G, and Chapter 12, state banks, trust companies, and state-licensed foreign bank branches, agencies, and representative offices;

(2) administer and enforce this subtitle, Subtitles F and G, and Chapter 12 in person, through a deputy banking commissioner or another officer or employee of the department, or through a supervisor, conservator, or other agent; and

(3) administer and enforce laws other than this subtitle, Subtitles F and G, and Chapter 12 as directed by those other laws.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.50, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 412, Sec. 2.01, eff. Sept. 1, 2001.

Sec. 31.102. ISSUANCE OF INTERPRETIVE STATEMENTS. (a) The banking commissioner may issue interpretive statements containing matters of general policy to guide the public and state banks, and may amend or repeal a published interpretive statement by issuing an amended statement or notice of repeal of a statement.

(b) An interpretive statement may be disseminated by newsletter, via an electronic medium such as the internet, in a volume of statutes or related materials published by the banking commissioner or others, or by other means reasonably calculated to notify persons affected by the interpretive statement. Notice of an amended or withdrawn statement must be disseminated in a substantially similar manner as the affected statement was originally disseminated.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.005, eff. Sept. 1, 1999.

Sec. 31.103. ISSUANCE OF OPINION. (a) In response to a specific request from a member of the public or the banking industry, the banking commissioner may issue an opinion directly or through a deputy banking commissioner or department attorney.

(b) If the banking commissioner determines that the opinion is useful for the general guidance of the public, state banks, or trust companies, the commissioner may disseminate the opinion by newsletter, via an electronic medium such as the internet, in a volume of statutes or related materials published by the banking commissioner or others, or by other means reasonably calculated to notify persons affected by the opinion. A published opinion must be redacted to preserve the confidentiality of the requesting party unless the requesting party consents to be identified in the published opinion.

(c) The banking commissioner may amend or repeal a published opinion by issuing an amended opinion or notice of repeal of an opinion and disseminating the opinion or notice in a substantially similar manner as the affected statement or opinion was originally disseminated. The requesting party, however, may rely on the original opinion if:

(1) all material facts were originally disclosed to the banking commissioner;

(2) the safety and soundness of the affected bank will not be affected by further reliance on the original opinion; and

(3) the text and interpretation of relevant, governing provisions of this subtitle or Chapter 12 have not been changed by legislative or judicial action.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.005, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 412, Sec. 2.02, eff. Sept. 1, 2001.

Sec. 31.104. EFFECT OF INTERPRETIVE STATEMENT OR OPINION. An interpretive statement or opinion issued under this subchapter does not have the force of law and is not a rule for the purposes of Chapter 2001, Government Code, unless adopted by the finance commission as provided by Chapter 2001, Government Code. An interpretive statement or opinion is an administrative construction of this subtitle or Chapter 12 entitled to great weight if the construction is reasonable and does not conflict with this subtitle or Chapter 12.

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

Sec. 31.105. EXAMINATION REQUIRED. (a) The banking commissioner shall examine each state bank annually, or on another periodic basis as may be required by rule or policy, or as the commissioner considers necessary to:

(1) safeguard the interests of depositors, creditors, and shareholders; and

(2) efficiently enforce applicable law.

(b) The banking commissioner may:

(1) accept an examination of a state bank by a federal or other governmental agency instead of an examination under this section; or

(2) conduct an examination of a state bank jointly with a federal or other governmental agency.

(c) The banking commissioner may:

(1) administer oaths and examine persons under oath on any subject that the commissioner considers pertinent to the financial condition or the safety and soundness of the activities of a state

bank; and

(2) subpoena witnesses and require and compel by subpoena the production of documents not voluntarily produced.

(c-1) If a person refuses to obey a subpoena, a district court of Travis County, on application by the commissioner, may issue an order requiring the person to appear before the commissioner and produce documents or give evidence regarding the matter under examination or investigation.

(d) Disclosure of information to the banking commissioner pursuant to an examination request or a subpoena issued under this section does not constitute a waiver of or otherwise affect or diminish an evidentiary privilege to which the information is otherwise subject. A report of an examination under this section is confidential and may be disclosed only under the circumstances provided by this subtitle.

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

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

(g) A subpoena issued under this section may prohibit the disclosure of information described by Subsection (f) 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. 2.03, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 5, eff. September 1, 2007.

Reenacted by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 10.002, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 3, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. 1823), Sec. 2, eff. September 1, 2019.

Sec. 31.106. COST OF REGULATION. Each state bank shall pay, through the imposition and collection of fees established by the finance commission under Section 31.003(a)(4):

(1) the cost of examination;

(2) the equitable or proportionate cost of maintenance and operation of the department; and

(3) the cost of enforcement of this subtitle and Chapter 12.

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

Sec. 31.107. REGULATION AND EXAMINATION OF RELATED ENTITIES. (a) The banking commissioner may regulate and examine, to the same extent as if the services or activities were performed by a state bank on its own premises:

(1) the activities of a state bank affiliate; and

(2) the services or activities of a third-party service provider that a state bank or state bank affiliate has contracted for or otherwise arranged to be performed on behalf of the state bank or state bank affiliate.

(b) The banking commissioner may collect a fee from an examined third-party service provider or affiliate in connection with each examination to cover the cost of the examination or may collect that fee from the state banks that use the examined third-party service provider.

(c) For purposes of this section, a state bank affiliate does not include a company in which ownership or membership is limited to individuals and conditioned by law on the existence and maintenance of professional licensing.

(d) To promote regulatory efficiency, if, in the preceding 24 months, a third-party service provider or affiliate has been examined by a federal or state financial services regulatory agency or by a member agency of the Federal Financial Institutions Examination Council, or its successor agency, the banking commissioner may accept the results of that examination instead of conducting the banking commissioner's own examination of the third-party service provider or affiliate. Nothing in this subsection shall be construed as limiting or restricting the banking commissioner from participating in an examination of a third-party service provider or affiliate conducted by a federal or state financial services regulatory agency or by a member agency of the Federal Financial Institutions Examination Council, or its successor agency.

(e) A third-party service provider that refuses to submit to examination or to pay an assessed fee for examination under this section is subject to an enforcement action under Chapter 35. With respect to a third-party service provider's refusal to submit to examination, the banking commissioner may notify all state banks of the refusal and warn that continued use of the third-party service provider may constitute an unsafe and unsound banking practice.

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. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. 1823), Sec. 3, eff. September 1, 2019.

Sec. 31.108. CALL REPORT; PENALTY. (a) A state bank shall file with the banking commissioner a copy of its call report stating the bank's financial condition and results of operation.

(b) The finance commission by rule may:

(1) require call reports to be filed with the banking commissioner at the intervals the commission determines;

(2) specify the form of a call report, including the

confidential and public information to be in the call report; and

(3) require public information in call reports of state banks to be published at the times and in the publications and locations the commission determines.

(c) A state bank that fails to timely file its call report as required by this section is subject to a penalty not exceeding $500 a day to be collected by suit by the attorney general on behalf of the banking commissioner.

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

SUBCHAPTER C. ADMINISTRATIVE PROCEDURE

Sec. 31.201. BANKING COMMISSIONER HEARING; INFORMAL DISPOSITION. (a) The banking commissioner may convene a hearing to receive evidence and argument regarding any matter within the jurisdiction of and before the banking commissioner for decision or review. The hearing must be conducted under Chapter 2001, Government Code. A matter made confidential by law must be considered by the banking commissioner in a closed hearing.

(b) A hearing before the banking commissioner that is required or authorized by law may be conducted by a hearing officer on behalf of the banking commissioner.

(c) This section does not grant a right to hearing to a person that is not otherwise granted by governing law.

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

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 2.04, eff. Sept. 1, 2001. Amended by:

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

Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. 3555), Sec. 2, eff. September 1, 2015.

Sec. 31.202. APPEAL OF BANKING COMMISSIONER DECISION OR ORDER. Except as expressly provided otherwise by this subtitle, an appellant may appeal a decision or order of the banking commissioner made under

this subtitle or Chapter 12 after a hearing to a district court in Travis County as provided by Section 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. 11, eff. September 1, 2019.

Sec. 31.204. APPEAL TO DISTRICT COURT. A person affected by a final order of the banking commissioner may appeal the final order by filing a petition for judicial review in a district court in Travis County as provided by Chapter 2001, Government Code. A petition for judicial review filed in the district court does not stay or vacate the appealed order unless the court, after notice and hearing, expressly stays or vacates the order.

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. 11, eff. September 1, 2019.

SUBCHAPTER D. CONFIDENTIALITY OF INFORMATION

Sec. 31.301. DISCLOSURE BY DEPARTMENT PROHIBITED. (a) Except as expressly provided otherwise by this subtitle, Chapter 11 or 12, or a rule adopted under this subtitle, the following are confidential and may not be disclosed by the banking commissioner or an employee of the department:

(1) information directly or indirectly obtained by the department in any manner, including an application or examination, concerning the financial condition or business affairs of a financial institution, a present, former, or prospective shareholder, officer, director, or affiliate of a financial institution, or a third-party service provider of a financial institution or its affiliate, other than information in a published statement or in the public portion of a call report or profit and loss statement; and

(2) all related files and records of the department.

(b) Information obtained by the department from a federal or state regulatory agency that is confidential under federal or state law may not be disclosed except as provided by federal or state law.

(c) The banking commissioner or an officer or employee of the department commits an offense if the person:

(1) discloses information or permits access to a file or record of the department; and

(2) knows at the time of disclosure or permission that the disclosure or permission violates this subchapter.

(d) An offense under this section is a Class A misdemeanor.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 2.05, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 6, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 3, eff. September 1, 2017.

Sec. 31.3015. DISCLOSURE TO STATE BANKS. The banking commissioner may disclose to a state bank information about an affiliate or third-party service provider of the state bank.

Added by Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 4, eff. September 1, 2017.

Sec. 31.302. DISCLOSURE TO FINANCE COMMISSION. Confidential information may not be disclosed to a member of the finance commission, and a member of the commission may not be given access to the files and records of the department except that the banking commissioner may disclose to the commission information, files, and records pertinent to a hearing or matter pending before the commission.

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

Sec. 31.303. DISCLOSURE TO OTHER AGENCIES. (a) For purposes of this section:

(1) "Affiliated group" means two or more persons affiliated through common ownership or a contractual common undertaking involving the sharing of customer information among those persons.

(2) "Agency" means a department or agency of this state, another state, the United States, or a foreign government with whom the United States currently maintains diplomatic relations, or any related agency or instrumentality.

(3) "Functional regulatory agency" means an agency that regulates and charters, licenses, or registers persons engaged in financial activities or activities incidental or complimentary to financial activities, including activities related to banking, insurance, or securities, within the jurisdiction of the agency.

(4) "Privilege" includes any work-product, attorney-client, or other privilege recognized under federal or state law.

(b) The banking commissioner may, as the commissioner considers necessary or proper to the enforcement of the laws of this state, another state, the United States, or a foreign sovereign state with whom the United States currently maintains diplomatic relations, or in the best interest of the public, disclose information in the possession of the department to another agency. The banking commissioner may not disclose information under this section that is confidential under applicable state or federal law unless:

(1) the recipient agency agrees to maintain the confidentiality and take all reasonable steps to oppose an effort to secure disclosure of the information from the agency; or

(2) the banking commissioner determines in the exercise of discretion that the interest of law enforcement outweighs and justifies the potential for disclosure of the information by the recipient agency.

(c) The banking commissioner by agreement may establish an information sharing and exchange program with a functional regulatory agency that has overlapping regulatory jurisdiction with the department, with respect to all or part of an affiliated group that includes a financial institution, to reduce the potential for duplicative and burdensome filings, examinations, and other regulatory activities. Each agency party to the agreement must agree to maintain confidentiality of information that is confidential under applicable state or federal law and take all reasonable steps to oppose any effort to secure disclosure of the information from the agency. An agreement may also specify procedures regarding use and handling of confidential information and identify types of information to be shared and procedures for sharing on a recurring basis.

(d) Disclosure of information by or to the banking commissioner under this section does not constitute a waiver of or otherwise affect or diminish an evidentiary privilege to which the information is otherwise subject, whether or not the disclosure is governed by a confidentiality agreement.

(e) Notwithstanding other law, an agency of this state:

(1) may execute, honor, and comply with an agreement to maintain confidentiality and oppose disclosure of information obtained from the banking commissioner as provided in this section; and

(2) shall treat as confidential any information obtained from the banking commissioner that is entitled to confidential treatment under applicable state or federal law and take all reasonable steps to oppose an effort to secure disclosure of the information from the agency.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 3, eff. Sept. 1, 2001.

Sec. 31.304. OTHER DISCLOSURE PROHIBITED; PENALTY. (a) Confidential information that is provided to a financial institution, affiliate, or service provider of a financial institution, whether in the form of a report of examination or otherwise, is the confidential property of the department. The information may not be made public or disclosed by the recipient or by an officer, director, manager, employee, or agent of the recipient to a person not officially connected to the recipient as officer, director, employee, attorney, auditor, or independent auditor except as authorized by rules adopted under this subtitle.

(b) A person commits an offense if the person discloses or uses information in violation of this section. An offense under this section is punishable as if it were an offense under Section 37.10, Penal Code.

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

Sec. 31.305. CIVIL DISCOVERY. Civil discovery of confidential information from a person subject to Section 31.304 under subpoena or other legal process must comply with rules adopted under this

subtitle and other applicable law. The rules may:

(1) restrict release of confidential information to the portion directly relevant to the legal dispute at issue; and

(2) require that a protective order, in form and under circumstances specified by the rules, be issued by a court before release of the confidential information.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 2.06, eff. Sept. 1, 2001.

Sec. 31.306. INVESTIGATIVE INFORMATION. Notwithstanding any other law, the banking commissioner may refuse to release information or records in the custody of the department if, in the opinion of the commissioner, release of the information or records might jeopardize an ongoing investigation of potentially unlawful activities.

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

Sec. 31.307. EMPLOYMENT INFORMATION. (a) A person may provide employment information concerning the known or suspected involvement of a present or former employee, officer, or director of a financial institution in a violation of a state or federal law, rule, or regulation that has been reported to appropriate state or federal authorities to:

(1) the financial institution; or

(2) a person providing employment information to the financial institution.

(b) A person may not be held liable for providing information under Subsection (a) unless the information provided is false and the person provided the information with disregard for the truth.

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

Sec. 31.308. SHAREHOLDER INSPECTION RIGHTS. (a) Notwithstanding Section 21.218 or 101.502, Business Organizations Code, a shareholder of a state bank may not examine:

(1) a report of examination or other confidential property of the department that is in the possession of the state bank; or

(2) a book or record of the state bank that directly or indirectly pertains to financial or other information maintained by the bank on behalf of its customers, including a specific item in the minutes of the board or a committee of the board regarding loan review and approval or a loan delinquency report that would tend to identify the bank's customer.

(b) This section does not affect a right of a shareholder of a state bank acting in another capacity.

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. 7, eff. September 1, 2007.

CHAPTER 32. POWERS, ORGANIZATION, AND FINANCIAL REQUIREMENTS

SUBCHAPTER A. ORGANIZATION AND POWERS IN GENERAL

Sec. 32.001. ORGANIZATION AND GENERAL POWERS OF STATE BANK. (a) One or more persons, a majority of whom are residents of this state, may organize a state bank as a banking association or a limited banking association.

(b) A state bank may:

(1) receive and pay deposits with or without interest, discount and negotiate promissory notes, borrow or lend money with or without security or interest, invest and deal in securities, buy and sell exchange, coin, and bullion, and exercise incidental powers as necessary to carry on the business of banking as provided by this subtitle;

(2) act as agent, or in a substantially similar capacity, with respect to a financial activity or an activity incidental or complementary to a financial activity;

(3) act in a fiduciary capacity, without giving bond, as guardian, receiver, executor, administrator, or trustee, including a mortgage or indenture trustee;

(4) provide financial, investment, or economic advisory services;

(5) issue or sell instruments representing pools of assets in which a bank may invest directly;

(6) with prior written approval of the banking commissioner, engage in a financial activity or an activity that is

incidental or complementary to a financial activity; and

(7) engage in any other activity, directly or through a subsidiary, authorized by this subtitle or rules adopted under this subtitle.

(c) For purposes of other state law, a banking association is considered a corporation and a limited banking association is considered a limited liability company. To the extent consistent with this subtitle, a banking association may exercise the powers of a Texas business corporation and a limited banking association may exercise the powers of a Texas limited liability company as reasonably necessary to enable exercise of specific powers under this subtitle.

(d) A state bank may contribute to a community fund or to another charitable, philanthropic, or benevolent instrumentality conducive to public welfare an amount that the bank's board considers expedient and in the interests of the bank.

(e) A state bank may be organized or reorganized as a community development financial institution or may serve as a community development partner, as those terms are defined by the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. No. 103-325).

(f) In the exercise of discretion consistent with the purposes of this subtitle, the banking commissioner may require a state bank to conduct an otherwise authorized activity through a subsidiary.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 4, eff. Sept. 1, 2001.

Sec. 32.002. CERTIFICATE OF FORMATION OF STATE BANK. (a) The certificate of formation of a state bank must be signed and acknowledged by each organizer and must contain:

(1) the name of the bank, subject to Subsection (b);

(2) the period of the bank's duration, which may be perpetual, subject to Subsection (c);

(3) the powers of the bank, which may be stated as:

(A) all powers granted by law to a state bank; or

(B) a list of the specific powers under Section 32.001 that the bank chooses to exercise;

(4) the aggregate number of shares that the bank will be

authorized to issue and the number of classes of shares, which may be one or more;

(5) if the shares are to be divided into classes:

(A) the designation of each class and statement of the preferences, limitations, and relative rights of the shares of each class, which in the case of a limited banking association may be more fully set forth in the participation agreement;

(B) the number of shares of each class; and

(C) a statement of the par value of the shares of each class or that the shares are to be without par value;

(6) any provision limiting or denying to shareholders the preemptive right to acquire additional or treasury shares of the bank;

(7) any provision granting the right of shareholders to cumulative voting in the election of directors;

(8) the aggregate amount of consideration to be received for all shares initially issued by the bank and a statement that:

(A) all authorized shares have been subscribed; and

(B) all subscriptions received have been irrevocably paid in cash;

(9) any provision that is otherwise required by this subtitle to be set forth in the certificate of formation;

(10) the street address of the bank's initial home office;

(11) the number of directors constituting the initial board and the names and street addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until successor directors have been elected and qualified; and

(12) subject to Section 32.008, any provision consistent with law that the organizers elect to set forth in the certificate of formation for the regulation of the internal affairs of the bank, including provisions permissible under the Business Organizations Code for:

(A) a for-profit corporation, in the case of a proposed banking association; or

(B) a limited liability company, in the case of a proposed limited banking association.

(b) The banking commissioner may determine that a proposed bank name is potentially misleading to the public and require the organizers to select a different name.

(c) A state bank, other than a private bank, organized before

August 31, 1993, is considered to have perpetual existence, notwithstanding a contrary statement in its articles of association, unless after September 1, 1995, the bank amends its certificate of formation or articles of association to reaffirm its limited duration.

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

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. 8, eff. September 1, 2007.

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

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 1, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 2, eff. June 14, 2013.

Sec. 32.003. APPLICATION FOR STATE BANK CHARTER; STANDARDS FOR APPROVAL. (a) An application for a state bank charter must be made under oath and in the form required by the banking commissioner, who shall inquire fully into the identity and character of each proposed director, officer, and principal shareholder. The application must be accompanied by all charter fees and deposits required by law.

(b) The banking commissioner shall grant a state bank charter only if the commissioner determines that the organizers have established that public convenience and advantage will be promoted by the establishment of the state bank. In determining whether public convenience and advantage will be promoted, the banking commissioner shall consider the convenience of the public to be served and whether:

(1) the organizational and capital structure and amount of initial capitalization is adequate for the business plan;

(2) the anticipated volume and nature of business indicates a reasonable probability of success and profitability based on the market sought to be served;

(3) the officers and directors as a group have sufficient banking experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the bank will operate in compliance with law and that success of the bank is probable;

(4) each principal shareholder has sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the bank will be free from improper or unlawful influence or interference with respect to the bank's operation in compliance with law; and

(5) the organizers are acting in good faith.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 5, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 9, eff. September 1, 2007.

Sec. 32.004. NOTICE AND INVESTIGATION OF CHARTER APPLICATION. (a) The organizers shall solicit comments and protests by publishing notice of the application, its date of filing, and the identity of the organizers, in the form and frequency specified by the banking commissioner, in a newspaper of general circulation in the county in which the bank is to be located, or in another publication or location as directed by the banking commissioner.

(b) At the expense of the organizers, the banking commissioner shall thoroughly investigate the application. The banking commissioner shall prepare a written report of the investigation.

(c) Rules adopted under this subtitle may specify the confidential or nonconfidential character of information obtained or prepared by the department under this chapter. Except as provided by Subchapter D, Chapter 31, or in rules regarding confidential information, the business plan of the applicant and the financial statement of a proposed officer or director are confidential and not subject to public disclosure.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 2.07, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 10, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 10.003, eff. September 1, 2009.

Sec. 32.005. PROTEST; HEARING; DECISION ON CHARTER APPLICATION. (a) A protest of a charter application must be received by the department before the 15th day after the date the organizers publish notice under Section 32.004(a) and must be accompanied by the fees and deposits required by law. If the protest is untimely, the department shall return all submitted fees and deposits to the protesting party. If the protest is timely, the department shall notify the applicant of the protest and mail or deliver a complete copy of the nonconfidential sections of the charter application to the protesting party before the 15th day after the later of the date of receipt of the protest or receipt of the charter application.

(b) A protesting party must file a detailed protest responding to each contested statement contained in the nonconfidential portion of the application not later than the 20th day after the date the protesting party receives the application from the department, and relate each statement and response to the standards for approval set forth in Section 32.003(b). The applicant must file a written reply to the protesting party's detailed response on or before the 10th day after the date the response is filed. The protesting party's response and the applicant's reply must be verified by affidavit and must certify that a copy was served on the opposing party. If applicable, statements in the response and in the reply may be supported by references to data available in sources of which official notice may properly be taken. Any comment received by the department and any reply of the applicant to the comment shall be made available to the protesting party.

(c) The banking commissioner may not be compelled to hold a hearing before granting or denying the charter application. In the exercise of discretion, the banking commissioner may consider granting a hearing on a charter application at the request of the applicant or a protesting party. The banking commissioner may order a hearing regardless of whether a hearing has been requested by a party. A party requesting a hearing must indicate with specificity

the issues involved that cannot be determined on the basis of the record compiled under Subsection (b) and why the issues cannot be determined. A request for hearing and the banking commissioner's decision with regard to granting a hearing shall be made a part of the record. If the banking commissioner sets a hearing, the banking commissioner shall conduct a public hearing and one or more prehearing conferences and opportunities for discovery as the banking commissioner considers advisable and consistent with the applicable law, except that the banking commissioner may not permit discovery of confidential information in the charter application or the investigation report.

(d) Based on the record, the banking commissioner shall determine whether the application meets the requirements of Section 32.003(b) and shall enter an order granting or denying the charter.

(e) The banking commissioner may make approval of an application conditional. The banking commissioner shall include any conditions in the order approving the application.

(f) Chapter 2001, Government Code, does not apply to a charter application filed for the purpose of assuming the assets and liabilities of a financial institution considered by the banking commissioner to be in hazardous condition.

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

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 3, eff. September 1, 2007.

Sec. 32.006. ISSUANCE OF CERTIFICATE OF AUTHORITY. A state bank may not engage in the business of banking until it receives a certificate of authority from the banking commissioner. The banking commissioner may not deliver the certificate of authority until the bank has:

(1) received cash for the issuance of all authorized shares in the full amount subscribed;

(2) elected or qualified the initial officers and directors named in the application for charter or other officers and directors approved by the banking commissioner; and

(3) complied with all the other requirements of this subtitle relating to the organization 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. 11, eff. September 1, 2007.

Sec. 32.007. DEADLINE TO BEGIN BUSINESS. If the state bank does not open and engage in the business of banking within six months after the date of the granting of its charter, the banking commissioner may forfeit the charter or cancel the conditional approval of application for charter without judicial action.

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

Sec. 32.008. APPLICATION OF GENERAL CORPORATE LAW. (a) The Business Organizations Code applies to a banking association as if it were a for-profit corporation, and to a limited banking association as if it were a limited liability company, to the extent not inconsistent with this subtitle or the proper business of a state bank, except that:

(1) a reference in the Business Organizations Code to the secretary of state means the banking commissioner unless the context requires otherwise; and

(2) the right of shareholders to cumulative voting in the election of directors exists only if granted by the bank's certificate of formation.

(b) The finance commission may adopt rules to limit or refine the applicability of the laws listed by Subsection (a) to a state bank or to alter or supplement the procedures and requirements of those laws applicable to an action taken under this chapter.

(c) Unless expressly authorized by this subtitle or a rule adopted under this subtitle, a state bank may not take an action authorized by a law listed by Subsection (a) regarding its corporate status, its capital structure, or a matter of corporate governance, of the type for which those laws would require a filing with the secretary of state if the bank were a filing entity, without submitting the filing to the banking commissioner and obtaining the banking commissioner's prior written approval of the action.

(d) In this subtitle, a reference to a term or phrase listed in

a subdivision of Section 1.006, Business Organizations Code, includes a synonymous term or phrase referenced by the same subdivision in Section 1.006 of that code.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 6, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 12, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 3, eff. June 14, 2013.

Sec. 32.009. PARITY BETWEEN STATE AND NATIONAL BANKS. (a) Section 16(a), Article XVI, Texas Constitution, empowers the legislature to authorize the incorporation of state banks and provide for a system of state regulation and control of state banks that will adequately protect and secure depositors and creditors. Section 16(c), Article XVI, Texas Constitution, grants to state banks created by virtue of the power vested in the legislature by Section 16(a) of that article the same rights and privileges that are or may be granted to national banks domiciled in this state. The legislature finds that Section 16(c) of that article does not restrict the legislature's power to provide a system of state regulation under Section 16(a) of that article that differs from the regulatory scheme imposed on national banks under federal law or prevent the finance commission, acting under authority granted by the legislature for the purpose of implementing this subtitle, from adopting rules that differ from federal statutes and regulations or that reasonably regulate the method or manner by which a state bank exercises its rights and privileges if the rules are adopted after due consideration of the factors listed in Section 31.003(b). The legislature further finds that Section 16(c), Article XVI, Texas Constitution, does not limit any rights or powers specifically given to state banks by the laws of this state.

(b) A state bank that intends to exercise a right or privilege granted to national banks that is not authorized for state banks under the statutes and rules of this state shall submit a letter to the banking commissioner describing in detail the activity in which the bank intends to engage and the specific authority of a national

bank to engage in that activity. The bank shall attach copies, if available, of relevant federal law, regulations, and interpretive letters. The bank may begin to perform the proposed activity after the 30th day after the date the banking commissioner receives the bank's letter unless the banking commissioner specifies an earlier or later date or prohibits the activity. The banking commissioner may prohibit the bank from performing the activity only if the banking commissioner finds that:

(1) a national bank domiciled in this state does not possess the specific right or privilege to perform the activity the bank seeks to perform; or

(2) the performance of the activity by the bank would adversely affect the safety and soundness of the bank.

(c) The banking commissioner may extend the 30-day period under Subsection (b) if the banking commissioner determines that the bank's letter raises issues requiring additional information or additional time for analysis. If the 30-day period is extended, the bank may perform the proposed activity only on prior written approval by the banking commissioner, except that the banking commissioner must approve or prohibit the proposed activity or convene a hearing under Section 31.201 not later than the 60th day after the date the banking commissioner receives the bank's letter. If a hearing is convened, the banking commissioner must approve or prohibit the proposed activity not later than the 30th day after the date the hearing is completed.

(d) A state bank that is denied the requested right or privilege to engage in an activity by the banking commissioner under this section may appeal as provided by Sections 31.202 and 31.204 or may resubmit a letter under this subsection with additional information or authority relevant to the banking commissioner's determination. A denial is immediately final for purposes of appeal.

(e) To effectuate the Texas Constitution, the finance commission may adopt rules implementing the method or manner in which a state bank exercises specific rights and privileges granted under Section 16(c), Article XVI, Texas Constitution, including rules regarding the exercise of rights and privileges that would be prohibited to state banks but for Section 16(c) of that article. The finance commission may not adopt rules under this subsection unless it considers the factors listed in Section 31.003(b) and finds that:

(1) national banks domiciled in this state possess the

rights or privileges to perform activities the rule would permit state banks to perform; and

(2) the rules contain adequate safeguards and controls, consistent with safety and soundness, to address the concern of the legislature evidenced by the state law the rules would impact.

(f) The exercise of rights and privileges by a state bank in compliance with and in the manner authorized by this section is not a violation of any statute of this state.

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. 12, eff. September 1, 2019.

Sec. 32.010. ADDITIONAL POWERS. (a) Notwithstanding another law, a Texas state bank may perform an act, own property, or offer a product or service that is at the time permissible within the United States for a depository institution organized under federal law or the law of this state or another state, if the banking commissioner approves the exercise of the power as provided by this section, subject to the same limitations and restrictions applicable to the other depository institution by pertinent law, except to the extent the limitations and restrictions are modified by rules adopted under Subsection (e). This section may not be used by a Texas state bank to alter or negate the application of the laws of this state with respect to:

(1) establishment and maintenance of a branch in this state or another state or country;

(2) permissible interest rates and loan fees chargeable in this state;

(3) fiduciary duties owed to a client or customer by the bank in its capacity as fiduciary in this state;

(4) consumer protection laws applicable to transactions in this state; or

(5) licensing and regulatory requirements administered by a functional regulatory agency in this state, as defined by Section 31.303, including licensing and regulatory requirements pertaining to:

(A) insurance activities;

(B) securities activities; and

(C) real estate development, marketing, and sales activities.

(b) A state bank that intends to exercise a power, directly or through a subsidiary, granted by Subsection (a) that is not otherwise authorized for state banks under the statutes of this state shall submit a letter to the banking commissioner describing in detail the power that the bank proposes to exercise and the specific authority of another depository institution to exercise the power. The bank shall attach copies, if available, of relevant law, regulations, and interpretive letters. The bank may begin to exercise the proposed power after the 30th day after the date the banking commissioner receives the bank's letter unless the banking commissioner specifies an earlier or later date or prohibits the activity. The banking commissioner may prohibit the bank from exercising the power only if the banking commissioner finds that:

(1) specific authority does not exist for another depository institution to exercise the proposed power;

(2) if the state bank is insured by the Federal Deposit Insurance Corporation, the state bank is prohibited from exercising the power pursuant to Section 24, Federal Deposit Insurance Act (12 U.S.C. Section 1831a), and related regulations; or

(3) the exercise of the power by the bank would adversely affect the safety and soundness of the bank.

(c) The banking commissioner may extend the 30-day period under Subsection (b) if the banking commissioner determines that the bank's letter raises issues requiring additional information or additional time for analysis. If the 30-day period is extended, the bank may exercise the proposed power only on prior written approval by the banking commissioner, except that the banking commissioner must approve or prohibit the proposed power or convene a hearing under Section 31.201 not later than the 60th day after the date the banking commissioner receives the bank's letter. If a hearing is convened, the banking commissioner must approve or prohibit the proposed power not later than the 30th day after the date the hearing is completed.

(d) A state bank that is denied the requested power by the banking commissioner under this section may appeal as provided by Sections 31.202 and 31.204 or may resubmit a letter under this section with additional information or authority relevant to the banking commissioner's determination. A denial is immediately final

for purposes of appeal.

(e) To effectuate this section, the finance commission may adopt rules implementing the method or manner in which a state bank exercises specific powers granted under this section, including rules regarding the exercise of a power that would be prohibited to state banks under state law but for this section. The finance commission may not adopt rules under this subsection unless it considers the factors listed in Section 31.003(b) and finds that:

(1) the conditions for prohibition by the banking commissioner under Subsection (b) do not exist; and

(2) if the rights and privileges would be prohibited to state banks under other state law, the rules contain adequate safeguards and controls, consistent with safety and soundness, to address the concern of the legislature evidenced by the state law the rules would affect.

(f) The exercise of a power by a state bank in compliance with and in the manner authorized by this section is not a violation of any statute of this state.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 2.006, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 7, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 13, eff. September 1, 2019.

Sec. 32.011. FINANCIAL ACTIVITIES. (a) The finance commission by rule may determine that an activity not otherwise approved or authorized for a state bank under this subtitle or other law is:

(1) a financial activity;

(2) incidental to a financial activity; or

(3) complementary to a financial activity.

(b) In adopting a rule under Subsection (a), the finance commission shall consider:

(1) the purposes of this subtitle and the Gramm-Leach-Bliley Act (Pub. L. No. 106-102);

(2) changes or reasonably expected changes in the marketplace in which state banks compete;

(3) changes or reasonably expected changes in the

technology for delivering financial services;

(4) whether the activity is necessary or appropriate to allow a state bank to:

(A) compete effectively with another company seeking to provide financial services;

(B) efficiently deliver information and services that are financial in nature through the use of technological means, including an application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; or

(C) offer customers available or emerging technological means for using financial services or for the document imaging of data;

(5) whether the activity would pose a substantial risk to the safety or soundness of a state bank or the financial system generally;

(6) if otherwise determined to be permissible, whether the conduct of the activity by a state bank should be qualified through the imposition of reasonable and necessary conditions to protect the public and require appropriate regard for safety and soundness of the bank and the financial system generally; and

(7) whether a state bank would be permitted to engage in the activity under applicable federal law, including 12 U.S.C. Section 1831a, and related regulations.

(c) A rule adopted by the finance commission under this section does not alter or negate applicable licensing and regulatory requirements administered by a functional regulatory agency of this state, as defined by Section 31.303, including licensing and regulatory requirements pertaining to:

(1) insurance activities;

(2) securities activities; and

(3) real estate development, marketing, and sales activities.

Added by Acts 2001, 77th Leg., ch. 528, Sec. 8, eff. Sept. 1, 2001.

SUBCHAPTER B. AMENDMENT OF CERTIFICATE; CHANGES IN CAPITAL AND SURPLUS

Sec. 32.101. AMENDMENT OR RESTATEMENT OF STATE BANK CERTIFICATE

OF FORMATION. (a) A state bank that has been granted a certificate of authority may amend or restate its certificate of formation for any lawful purpose, including the creation of authorized but unissued shares or participation shares in one or more classes or series.

(b) An amendment authorizing the issuance of shares or participation shares in series must contain:

(1) the designation of each series and a statement of any variations in the preferences, limitations, and relative rights among series to the extent that the preferences, limitations, and relative rights are to be established in the certificate of formation; and

(2) a statement of any authority to be vested in the bank's board to establish series and determine the preferences, limitations, and relative rights of each series.

(c) Amendment or restatement of the certificate of formation of a state bank and approval of the bank's board and shareholders must be made or obtained as provided by the Business Organizations Code except as otherwise provided by this subtitle or rules adopted under this subtitle. The original and one copy of the certificate of amendment or restated certificate of formation must be filed with the banking commissioner for approval. Unless the submission presents novel or unusual questions, the banking commissioner shall approve or reject the amendment or restatement not later than the 31st day after the date the banking commissioner considers the submission informationally complete and accepted for filing. The banking commissioner may require the submission of additional information as considered necessary to an informed decision to approve or reject any amendment or restatement of a certificate of formation under this section. If the banking commissioner finds that the amendment or restatement conforms to law and any conditions imposed by the banking commissioner, and any required filing fee has been paid, the banking commissioner shall:

(1) endorse the face of the original and copy of the amendment or restatement with the date of approval and the word "Approved";

(2) file the original of the amendment or restatement in the department's records; and

(3) deliver a certified copy of the amendment or restatement to the bank.

(e) An amendment or restatement, if approved, takes effect on the date of approval unless the amendment or restatement provides for

a different effective date.

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. 13, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 5, eff. June 14, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 6, eff. June 14, 2013.

Sec. 32.102. ESTABLISHING SERIES OF SHARES. (a) If the certificate of formation expressly gives the board of a state bank authority to establish shares in series and determine the preferences, limitations, and relative rights of each series, the board may do so only in compliance with this section and any rules adopted under this subtitle.

(b) A series of shares may be established in the manner provided by the Business Organizations Code, but the shares of the series may not be issued and sold without the prior written approval of the banking commissioner under Section 32.103. The bank shall file the original and one copy of the statement of action required by the Business Organizations Code with the banking commissioner.

(c) Unless the submission presents novel or unusual questions, the banking commissioner shall approve or reject the series not later than the 31st day after the date the banking commissioner considers the submission informationally complete and accepted for filing. The banking commissioner may require the submission of additional information as considered necessary to an informed decision to approve or reject a proposed series under this section.

(d) If the banking commissioner finds that the interests of depositors and creditors will not be adversely affected by the series, that the series conforms to law and any conditions imposed by the banking commissioner, and that any required filing fee has been paid, the banking commissioner shall:

(1) endorse the face of the original and copy of the statement with the date of approval and the word "Approved";

(2) file the original of the statement in the department's records; and

(3) deliver a certified copy of the statement to the state 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. 14, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 15, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 7, eff. June 14, 2013.

Sec. 32.103. CHANGE IN OUTSTANDING CAPITAL AND SURPLUS. (a) A state bank may not reduce or increase its outstanding capital and surplus through dividend, redemption, issuance of shares, or otherwise, without the prior written approval of the banking commissioner, except as permitted by this section or rules adopted under this subtitle.

(b) Unless restricted by rule, prior written approval is not required for an increase in capital and surplus accomplished through:

(1) issuance of shares of common stock for cash, or a cash contribution to surplus by shareholders that does not result in issuance of additional common stock or other securities;

(2) declaration and payment of pro rata share dividends as defined by the Business Organizations Code; or

(3) adoption by the board of a resolution directing that all or part of undivided profits be transferred to capital or surplus.

(c) Prior approval is not required for:

(1) a decrease in capital or surplus caused by losses in excess of undivided profits; or

(2) a change in capital and surplus resulting from accounting adjustments required by a transaction approved by the banking commissioner if the accounting adjustments are reasonably disclosed in the submitted application.

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. 16, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 4, eff. September 1, 2007.

Sec. 32.104. CAPITAL NOTES OR DEBENTURES. (a) With the prior written approval of the banking commissioner, a state bank may at any time, through action of its board and without requiring action of its shareholders, issue and sell its capital notes or debentures. The capital notes or debentures must be subordinate to the claims of depositors and may be subordinate to other claims, including the claims of other creditors or the shareholders.

(b) Capital notes or debentures may be convertible into shares of any class or series. The issuance and sale of convertible capital notes or debentures are subject to satisfaction of preemptive rights, if any, to the extent provided by law.

(c) Without the prior written approval of the banking commissioner, a state bank may not pay interest due or principal repayable on outstanding capital notes or debentures when the bank is in hazardous condition or is insolvent, or to the extent that payment will cause the bank to be in hazardous condition or insolvent, as determined by the banking commissioner.

(d) The amount of any outstanding capital notes or debentures that meet the requirements of this section and that are subordinated to unsecured creditors of the bank may be included in equity capital of the bank for purposes of determining hazardous condition or insolvency and for other purposes provided by rules adopted under this subtitle.

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. 17, eff. September 1, 2007.

SUBCHAPTER C. BANK OFFICES

Sec. 32.201. CONDUCT OF THE BUSINESS OF BANKING. (a) A state bank may engage in the banking business at its home office, at an approved branch office location, and through electronic terminals. A drive-in facility must be approved as a branch if it is more than 2,000 feet from the nearest wall of the bank's home office or another

approved branch office.

(b) A function of a state bank that does not involve banking contact with the public may be conducted at any location without prior written approval of the banking commissioner. The finance commission may adopt rules further defining functions of a state bank that are not required to be conducted at an approved location.

(c) The finance commission by rule under Section 32.009 may authorize a new form of banking facility. The banking commissioner may approve a new form of banking facility other than as provided by this subchapter if the banking commissioner does not have a significant supervisory or regulatory concern regarding the proposed facility.

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

Sec. 32.202. HOME OFFICE. (a) Each state bank must have and continuously maintain in this state a home office. The home office must be a location at which the bank does business with the public and keeps its corporate books and records. At least one officer of the bank must maintain an office at the home office.

(b) A state bank may change its home office to one of its previously established branch locations in this state, if the location that is the home office before the change is to remain as a branch of the bank, by filing a written notice with the banking commissioner. The notice must set forth the name of the bank, the street address of its home office before the change, the street address of the location to which the home office is to be changed, and a copy of the resolution adopted by the bank's board authorizing the change. The change of home office takes effect on the 31st day after the date the banking commissioner receives the notice unless the banking commissioner consents to a different effective date.

(c) A state bank may change its home office to any location in this state, other than as permitted by Subsection (b), on prior written approval of the banking commissioner. The banking commissioner shall grant an application under this subsection if the banking commissioner does not have a significant supervisory or regulatory concern regarding the proposed banking facility, the applicant, or an affiliate of the applicant. Any standard established by the banking commissioner or the finance commission

regarding the establishment of a branch under Section 32.203 applies to an application for a change of home office that is subject to this subsection, except as otherwise provided by rules adopted under this subtitle.

(d) If the proposed relocation of the bank's home office would effect an abandonment of all or part of the community served by the bank, the bank must establish to the satisfaction of the banking commissioner that the abandonment is consistent with the original determination of public necessity for the establishment of a bank at that location.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.007, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 244 (H.B. 2219), Sec. 2, eff. September 1, 2007.

Sec. 32.203. BRANCH OFFICES. (a) A state bank may establish and maintain a branch office at any location on prior written approval of the banking commissioner. If the banking commissioner does not have a significant supervisory or regulatory concern regarding the proposed branch, the applicant, or an affiliate of the applicant, the banking commissioner shall approve the application.

(b) The finance commission may adopt rules establishing additional standards for the approval of branch offices.

(c) A state bank may not establish or maintain a branch on the premises or property of an affiliate if the affiliate engages in a commercial activity.

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

Acts 2007, 80th Leg., R.S., Ch. 217 (H.B. 944), Sec. 2, eff. May 25, 2007.

Sec. 32.204. DEPOSIT OR LOAN PRODUCTION OFFICES. (a) A state bank may establish one or more deposit or loan production offices for the purpose of:

(1) soliciting deposit accounts, applications for loans, or equivalent transactions;

(2) performing ministerial duties related to solicitations described by Subdivision (1); and

(3) conducting other activities as permitted by rules adopted under this subtitle.

(b) The bank shall notify the banking commissioner in writing of the location of and activities to be conducted at a proposed deposit or loan production office of the bank. The bank may establish the proposed office beginning on the 31st day after the date the banking commissioner receives the bank's notice unless the banking commissioner specifies that the proposed office be established on an earlier or later date.

(c) The banking commissioner may extend the 30-day period prescribed by Subsection (b) on a determination that the bank's notice raises issues that require additional information or time for analysis. If the period is extended, the bank may establish the proposed deposit or loan production office only with the prior written approval of the banking commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 2.08, eff. Sept. 1, 2001. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 4, eff. June 14, 2013.

SUBCHAPTER D. MERGER

Sec. 32.301. MERGER AUTHORITY. (a) Two or more financial institutions, corporations, or other entities with the authority to participate in a merger, at least one of which is a state bank, may adopt and implement a plan of merger in accordance with this section. The merger may not be made without the prior written approval of the banking commissioner if any surviving, new, or acquiring entity that is a party to the merger or created by the terms of the merger is a state bank or is not a financial institution.

(b) Implementation of the merger by the parties and approval of the board, shareholders, or owners of the parties must be made or obtained in accordance with the Business Organizations Code as if the state bank were a filing entity and all other parties to the merger were foreign entities, except as may be otherwise provided by applicable rules.

(c) A consummated merger has the effect provided by the Business Organizations Code. A separate application is not required to relocate the home office of a surviving state bank or to grant authority to a surviving bank to operate new branch offices that previously existed as part of a merging financial institution if the intent of the surviving bank is clearly stated as part of the plan of merger.

(d) A merger under this subchapter does not confer additional powers on a state bank beyond the powers conferred by other provisions of this subtitle.

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. 18, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 8, eff. June 14, 2013.

Sec. 32.302. APPROVAL OF BANKING COMMISSIONER. (a) If the merger is subject to the prior written approval of the banking commissioner, the original certificate of merger and a number of copies of the certificate equal to the number of surviving, new, and acquiring entities must be filed with the banking commissioner. On this filing, the banking commissioner shall investigate the condition of the merging parties. The banking commissioner may require the submission of additional information the banking commissioner determines necessary to an informed decision to approve or reject a merger under this subchapter.

(b) The banking commissioner shall approve the merger only if:

(1) each resulting state bank:

(A) has complied with the laws of this state relating to the organization and operation of state banks; and

(B) will be solvent and have adequate capitalization for its business and location;

(2) all deposit and other liabilities of each state bank that is a party to the merger have been properly discharged or otherwise assumed or retained by a financial institution;

(3) each surviving, new, or acquiring entity that is not a depository institution will not be engaged in the unauthorized

business of banking, and each state bank will not be engaged in a business other than banking or a business incidental to banking;

(4) the parties have complied with the laws of this state; and

(5) all conditions imposed by the banking commissioner have been satisfied or otherwise resolved.

(c) If the banking commissioner approves the merger and finds that all required filing fees and investigative costs have been paid, the banking commissioner shall:

(1) endorse the face of the original and each copy of the certificate of merger with the date of approval and the word "Approved";

(2) file the original of the certificate of merger in the department's records; and

(3) deliver a certified copy of the certificate of merger to each surviving, new, or acquiring entity.

(d) An approved merger takes effect on the date of approval unless the merger agreement provides for a different effective date.

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

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 9, eff. June 14, 2013.

Sec. 32.303. RIGHTS OF DISSENTERS FROM MERGER. A shareholder may dissent from the merger to the extent, and by following the procedure provided, by the Business Organizations Code or any rules adopted under this subtitle.

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. 19, eff. September 1, 2007.

Sec. 32.304. LIMITATION ON CONTROL OF DEPOSITS. (a) A merger is not permitted under this subchapter if, on consummation of the transaction, the resulting state bank, including all insured depository institution affiliates of the resulting state bank, would control 20 percent or more of the total amount of deposits in this

state held by all insured depository institutions in this state.

(b) On request of the banking commissioner the applicant shall provide supplemental information to the banking commissioner to aid in a determination under this section, including information that is more current than or in addition to information in the most recently available summary of deposits, reports of condition, or similar reports filed with or produced by state or federal authorities.

(c) In this section, "deposit" and "insured depository institution" have the meanings assigned by Section 3, Federal Deposit Insurance Act (12 U.S.C. Section 1813), as amended.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 2.008, eff. Sept. 1, 1999.

SUBCHAPTER E. PURCHASE OR SALE OF ASSETS

Sec. 32.401. AUTHORITY TO PURCHASE ASSETS. (a) A state bank may purchase assets from another financial institution or other seller, except that the prior written approval of the banking commissioner is required if the purchase price exceeds an amount equal to three times the bank's unimpaired capital and surplus. The finance commission by rule may require a state bank to obtain the prior written approval of the banking commissioner for a transaction not otherwise subject to approval that involves potentially substantial risks to the safety and soundness of the purchasing bank.

(b) Except as otherwise expressly provided by another statute, the purchase of all or part of the assets of the selling entity does not make the purchasing bank responsible for any liability or obligation of the selling entity that the purchasing bank does not expressly assume.

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

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 5, eff. September 1, 2007.

Sec. 32.402. AUTHORITY TO ACT AS DISBURSING AGENT. (a) The purchasing bank may hold the purchase price and any additional money delivered to it by the selling institution in trust for, or as a deposit to the credit of, the selling institution and may act as

agent of the selling institution in disbursing the money in trust or on deposit by paying the depositors and creditors of the selling institution.

(b) If the purchasing bank acts under written contract of agency approved by the banking commissioner that specifically names each depositor and creditor and the amount to be paid each, and if the agency is limited to the purely ministerial act of paying those depositors and creditors the amounts due them as determined by the selling institution and reflected in the contract of agency and does not involve discretionary duties or authority other than the identification of the depositors and creditors named, the purchasing bank:

(1) may rely on the contract of agency and the instructions included in it; and

(2) is not responsible for:

(A) any error made by the selling institution in determining its liabilities, the depositors and creditors to whom the liabilities are due, or the amounts due the depositors and creditors; or

(B) any preference that results from the payments made under the contract of agency and the instructions included in it.

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

Sec. 32.403. LIQUIDATION OF SELLING INSTITUTION. If the selling financial institution is at any time after the sale of assets voluntarily or involuntarily closed for liquidation by a state or federal regulatory agency, the purchasing bank shall pay to the receiver of the selling institution the balance of the money held by it in trust or on deposit for the selling institution and not yet paid to the depositors and creditors of the selling institution. Without further action the purchasing bank is discharged from all responsibilities to the selling institution and to the selling institution's receiver, depositors, creditors, and shareholders.

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. 20, eff. September 1, 2007.

Sec. 32.404. PAYMENT TO DEPOSITORS AND CREDITORS. The purchasing bank may pay a depositor or creditor of the selling institution the amount to be paid the person under the terms of the contract of agency by opening an account in the name of the depositor or creditor, crediting the account with the amount to be paid the depositor or creditor under the terms of the agency contract, and mailing or personally delivering a duplicate deposit ticket evidencing the credit to the depositor or creditor at the person's address shown in the records of the selling institution. The relationship between the purchasing bank and the depositor or creditor is that of debtor to creditor only to the extent of the credit reflected by the deposit ticket.

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

Sec. 32.405. SALE OF ASSETS. (a) A state bank may sell a portion of its assets to another financial institution or other buyer, except that the prior written approval of the banking commissioner is required if the sales price exceeds an amount equal to three times the bank's unimpaired capital and surplus. The finance commission by rule may require a state bank to obtain the prior written approval of the banking commissioner for a transaction not otherwise subject to approval that involves potentially substantial risks to the safety and soundness of the selling bank.

(b) If the prior approval of the banking commissioner for a sale of assets is not required under Subsection (a) and the sale involves the disposition of a branch office or another established location of the state bank, the state bank must provide written notice of the transaction to the banking commissioner at least 30 days before the expected closing date of the transaction.

(c) The board of a state bank, with the prior written approval of the banking commissioner, may cause the bank to sell all or substantially all of its assets without shareholder approval if:

(1) the banking commissioner finds the interests of depositors and creditors are jeopardized because of insolvency or imminent insolvency and that the sale is in their best interest; and

(2) the Federal Deposit Insurance Corporation or its successor approves the transaction and agrees to provide assistance to the prospective buyer under 12 U.S.C. Section 1823(c) or a

comparable law unless the deposits of the bank are not insured.

(d) A sale under Subsection (c) must include an assumption and promise by the buyer to pay or otherwise discharge:

(1) all of the bank's liabilities to depositors;

(2) all of the bank's liabilities for salaries of the bank's employees incurred before the date of the sale;

(3) obligations incurred by the banking commissioner arising out of the supervision or sale of the bank; and

(4) fees and assessments due the department.

(e) This section does not affect the banking commissioner's right to take action under another law. The sale by a state bank of all or substantially all of its assets with shareholder approval is considered a voluntary dissolution and liquidation and is governed by Subchapter B, Chapter 36.

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. 21, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 6, eff. September 1, 2007.

Sec. 32.406. LIMITATION ON CONTROL OF DEPOSITS. (a) A purchase of assets is not permitted under Section 32.401 if, on consummation of the transaction, the acquiring state bank, including all insured depository institution affiliates of the resulting state bank, would control 20 percent or more of the total amount of deposits in this state held by all insured depository institutions in this state.

(b) On request of the banking commissioner the applicant shall provide supplemental information to the banking commissioner to aid in a determination under this section, including information that is more current than or in addition to information in the most recently available summary of deposits, reports of condition, or similar reports filed with or produced by state or federal authorities.

(c) In this section, "deposit" and "insured depository institution" have the meanings assigned by Section 3, Federal Deposit Insurance Act (12 U.S.C. Section 1813), as amended.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 2.009, eff. Sept. 1,

1999.

SUBCHAPTER F. EXIT OF STATE BANK OR ENTRY OF ANOTHER FINANCIAL INSTITUTION

Sec. 32.501. MERGER OR CONVERSION OF STATE BANK INTO ANOTHER FINANCIAL INSTITUTION. (a) Subject to Subtitle G, a state bank may act as necessary under and to the extent permitted by the laws of the United States, this state, another state, or another country to merge or convert into another financial institution, as that term is defined by Section 201.101.

(b) The merger or conversion by the state bank must be made and approval of its board and shareholders must be obtained in accordance with the Business Organizations Code as if the state bank were a filing entity and all other parties to the transaction, if any, were foreign entities, except as provided by rule. For purposes of this subsection, a conversion is considered a merger into the successor form of financial institution.

(c) The state bank does not cease to be a state bank subject to the supervision of the banking commissioner unless:

(1) the banking commissioner has been given written notice of the intention to merge or convert before the 31st day before the date of the proposed transaction;

(2) the bank has filed with the banking commissioner:

(A) a copy of the application filed with the successor regulatory authority, including a copy of each contract evidencing or implementing the merger or conversion, or other documents sufficient to show compliance with applicable law; and

(B) a certified copy of all minutes of board meetings and shareholder meetings at which action was taken regarding the merger or conversion;

(3) the banking commissioner determines that:

(A) all deposit and other liabilities of the state bank are fully discharged, assumed, or otherwise retained by the successor form of financial institution;

(B) any conditions imposed by the banking commissioner for the protection of depositors and creditors have been met or otherwise resolved; and

(C) any required filing fees have been paid; and

(4) the bank has received a certificate of authority to do

business as the successor financial institution.

(d) Section 32.304 applies to a proposed merger under this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.010, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 22, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 7, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 10, eff. June 14, 2013.

Sec. 32.502. CONVERSION OF FINANCIAL INSTITUTION INTO STATE BANK. (a) A financial institution, as that term is defined by Section 201.101, may apply to the banking commissioner for conversion into a state bank on a form prescribed by the banking commissioner and accompanied by any required fee if the institution follows the procedures prescribed by the laws of the United States, this state, another state, or another country governing the exit of the financial institution for the purpose of conversion into a state bank from the regulatory system applicable before the conversion. A banking association or limited banking association may convert its organizational form under this section.

(b) A financial institution applying to convert into a state bank may receive a certificate of authority to do business as a state bank if the banking commissioner finds that:

(1) the financial institution is not engaging in a pattern or practice of unsafe and unsound banking practices;

(2) the financial institution has adequate capitalization for a state bank to engage in business at the same locations as the financial institution is engaged in business before the conversion;

(3) the financial institution can be expected to operate profitably after the conversion;

(4) the officers and directors of the financial institution as a group have sufficient banking experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the financial institution will operate as a state bank in compliance

with law;

(5) each principal shareholder has sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the financial institution will be free from improper or unlawful influence or interference with respect to the financial institution's operation as a state bank in compliance with law; and

(6) if the converting financial institution did not have general depository powers and the state bank will have those powers, the factors set forth in Section 32.003(b) are satisfied.

(c) The banking commissioner may:

(1) request additional information considered necessary to an informed decision under this section;

(2) perform an examination of the converting financial institution at the expense of the converting financial institution; and

(3) require that examination fees be paid before a certificate of authority is issued.

(d) In connection with the application, the converting financial institution must:

(1) submit a statement of the law governing the exit of the financial institution from the regulatory system applicable before the conversion and the terms of the transition into a state bank; and

(2) demonstrate that all applicable law has been fully satisfied.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.010, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 23, eff. September 1, 2007.

CHAPTER 33. OWNERSHIP AND MANAGEMENT OF STATE BANK

SUBCHAPTER A. TRANSFER OF OWNERSHIP INTEREST

Sec. 33.001. ACQUISITION OF CONTROL. (a) Except as otherwise expressly permitted by this subtitle, without the prior written approval of the banking commissioner a person may not directly or indirectly acquire a legal or beneficial interest in voting

securities of a state bank or a corporation or other entity owning voting securities of a state bank if, after the acquisition, the person would control the bank.

(b) For purposes of this subchapter and except as otherwise provided by rules adopted under this subtitle, the principal shareholder of a state bank that directly or indirectly owns or has the power to vote a greater percentage of voting securities of the bank than any other shareholder is considered to control the bank.

(c) This subchapter does not prohibit a person from negotiating to acquire, but not acquiring, control of a state bank or a person that controls a state 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. 24, eff. September 1, 2007.

Sec. 33.002. APPLICATION REGARDING ACQUISITION OF CONTROL. (a) The proposed transferee in an acquisition of control of a state bank or of a person that controls a state bank must file an application for approval of the acquisition. The application must:

(1) be under oath and in a form prescribed by the banking commissioner;

(2) contain all information that:

(A) is required by rules adopted under this subtitle; or

(B) the banking commissioner requires in a particular application as necessary to an informed decision to approve or reject the proposed acquisition; and

(3) be accompanied by any filing fee required by law.

(a-1) The banking commissioner shall promptly notify the applicant of the date the banking commissioner determines the application to be informationally complete and accepted for filing.

(b) If a person proposing to acquire voting securities in a transaction subject to this section includes any group of persons acting in concert, the information required by the banking commissioner may be required of each member of the group.

(c) Rules adopted under this subtitle may specify the confidential or nonconfidential character of information obtained by

the banking commissioner under this section. In the absence of rules, information obtained by the banking commissioner under this section is confidential and may not be disclosed by the banking commissioner or any employee of the department except as provided by Subchapter D, Chapter 31.

(d) The applicant shall publish notice of the application, the date the application is accepted for filing, and the identity of the applicant and, if the applicant includes a group, the identity of each group member. The notice must be published in the form and frequency specified by the banking commissioner and in a newspaper of general circulation in the county in which the bank's home office is located, or in another publication or location as directed by the banking commissioner.

(e) The applicant may defer publication of the notice until not later than the 34th day after the date the application is accepted for filing if:

(1) the application is filed in contemplation of a public tender offer subject to 15 U.S.C. Section 78n(d)(1);

(2) the applicant requests confidential treatment and represents that a public announcement of the tender offer and the filing of appropriate forms with the Securities and Exchange Commission or the appropriate federal banking agency, as applicable, will occur within the period of deferral; and

(3) the banking commissioner determines that the public interest will not be harmed by the requested confidential treatment.

(f) The banking commissioner may waive the requirement that a notice be published or permit delayed publication on a determination that waiver or delay is in the public interest. If publication of notice is waived under this subsection, the information that would be contained in a published notice becomes public information under Chapter 552, Government Code, on the 35th day after the date the application is accepted for filing.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 2.09, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 8, eff. September 1, 2007.

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

Sec. 33.003. HEARING AND DECISION ON ACQUISITION OF CONTROL. (a) Not later than the 60th day after the date the notice is published, the banking commissioner shall approve the application or set the application for hearing. If the banking commissioner sets a hearing, the department shall participate as the opposing party and the banking commissioner shall conduct the hearing and one or more prehearing conferences and opportunities for discovery as the banking commissioner considers advisable and consistent with governing law. A hearing held under this section is confidential and closed to the public.

(b) Based on the record, the banking commissioner may issue an order denying an application if:

(1) the acquisition would substantially lessen competition, restrain trade, result in a monopoly, or further a combination or conspiracy to monopolize or attempt to monopolize the banking industry in any part of this state, unless:

(A) the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served; and

(B) the proposed acquisition does not violate the law of this state or the United States;

(2) the financial condition of the proposed transferee, or any member of a group comprising the proposed transferee, might jeopardize the financial stability of the bank being acquired;

(3) plans or proposals to operate, liquidate, or sell the bank or its assets are not in the best interests of the bank;

(4) the experience, ability, standing, competence, trustworthiness, and integrity of the proposed transferee, or any member of a group comprising the proposed transferee, are insufficient to justify a belief that the bank will be free from improper or unlawful influence or interference with respect to the bank's operation in compliance with law;

(5) the bank will not be solvent, have adequate capitalization, or comply with the law of this state after the acquisition;

(6) the proposed transferee has not furnished all information pertinent to the application reasonably required by the

banking commissioner; or

(7) the proposed transferee is not acting in good faith.

(c) If the banking commissioner approves the application, the transaction may be consummated. If the approval is conditioned on a written commitment from the proposed transferee offered to and accepted by the banking commissioner, the commitment is enforceable against the bank and the transferee and is considered for all purposes an agreement under this subtitle.

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

Sec. 33.004. APPEAL FROM ADVERSE DECISION. (a) If a hearing has been held, the banking commissioner has entered an order denying the application, and the order has become final, the proposed transferee may appeal the order by filing a petition for judicial review.

(b) The filing of an appeal under this section does not stay the order of the banking commissioner.

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

Sec. 33.005. EXEMPTIONS. The following acquisitions are exempt from Section 33.001:

(1) an acquisition of securities in connection with the exercise of a security interest or otherwise in full or partial satisfaction of a debt previously contracted for in good faith and the acquiring person files written notice of acquisition with the banking commissioner before the person votes the securities acquired;

(2) an acquisition of voting securities in any class or series by a controlling person who has previously complied with and received approval under this subchapter or who was identified as a controlling person in a prior application filed with and approved by the banking commissioner;

(3) an acquisition or transfer by operation of law, will, or intestate succession and the acquiring person files written notice of acquisition with the banking commissioner before the person votes the securities acquired;

(4) a transaction subject to Chapter 202 if:

(A) the acquiring bank holding company currently owns

and controls a state bank; or

(B) the post-transaction controlling person:

(i) has previously complied with and received approval as a controlling person under this subchapter; or

(ii) is identified as the controlling person in a merger or other acquisition-related application filed with the banking commissioner concurrently with the submission required by Section 202.001; and

(5) a transaction exempted by the banking commissioner or by rules adopted under this subtitle because the transaction is not within the purposes of this subchapter or the regulation of the transaction is not necessary or appropriate to achieve the objectives of this subchapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.011, eff. Sept. 1, 1999. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. 1823), Sec. 4, eff. September 1, 2019.

Sec. 33.006. OBJECTION TO OTHER TRANSFER. This subchapter does not prevent the banking commissioner from investigating, commenting on, or seeking to enjoin or set aside a transfer of voting securities that evidence a direct or indirect interest in a state bank, regardless of whether the transfer is governed by this subchapter, if the banking commissioner considers the transfer to be against the public interest.

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

Sec. 33.007. CIVIL ENFORCEMENT; CRIMINAL PENALTY. (a) If the banking commissioner believes that a person has violated or is about to violate this subchapter or a rule of the finance commission or order of the banking commissioner pertaining to this subchapter, the attorney general on behalf of the banking commissioner may apply to a district court of Travis County for an order enjoining the violation and for other equitable relief the nature of the case requires.

(b) A person who knowingly fails or refuses to file the application required by Section 33.002 commits an offense. An

offense under this subsection is a Class A misdemeanor.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 21, eff. Sept. 1, 2001.

SUBCHAPTER B. BOARD AND OFFICERS

Sec. 33.101. VOTING SECURITIES HELD BY BANK. (a) Voting securities of a state bank held by the bank in a fiduciary capacity under a will or trust, whether registered in the bank's name or in the name of its nominee, may not be voted in the election of directors or on a matter affecting the compensation of directors, officers, or employees of the bank in that capacity unless:

(1) under the terms of the will or trust, the manner in which the voting securities are to be voted may be determined by a donor or beneficiary of the will or trust and the donor or beneficiary makes the determination in the matter at issue;

(2) the terms of the will or trust expressly direct the manner in which the securities must be voted so that discretion is not vested in the bank as fiduciary; or

(3) the securities are voted solely by a cofiduciary that is not an affiliate of the bank, as if the cofiduciary were the sole fiduciary.

(b) Voting securities of a state bank that cannot be voted under this section are considered to be authorized but unissued for purposes of determining the procedures for and results of the affected vote.

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. 25, eff. September 1, 2007.

Sec. 33.102. BYLAWS. Each state bank shall adopt bylaws and may amend its bylaws for the purposes and according to the procedures provided by the Business Organizations Code.

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. 26, eff.

September 1, 2007.

Sec. 33.103. BOARD OF DIRECTORS. (a) The board of a state bank must consist of not fewer than five but not more than 25 directors, a majority of whom are residents of this state. The principal executive officer of the bank is a member of the board. The principal executive officer acting in the capacity of a board member is the board's presiding officer unless the board elects a different presiding officer to perform the duties as designated by the board.

(b) Unless the banking commissioner consents otherwise in writing, a person may not serve as director of a state bank if:

(1) the bank incurs an unreimbursed loss attributable to a charged-off obligation of or holds a judgment against:

(A) the person; or

(B) an entity that was controlled by the person at the time of funding and at the time of default on the loan that gave rise to the judgment or charged-off obligation;

(2) the person is the subject of an order described by Section 35.007(a); or

(3) the person has been convicted of a felony.

(c) If a state bank does not elect directors before the 61st day after the date of its regular annual meeting, the banking commissioner may appoint a conservator under Chapter 35 to operate the bank and elect directors, as appropriate. If the conservator is unable to locate or elect persons willing and able to serve as directors, the banking commissioner may close the bank for liquidation.

(d) A vacancy on the board that reduces the number of directors to fewer than five must be filled not later than the 30th day after the date the vacancy occurs. If the vacancy is not timely filled, the banking commissioner may appoint a conservator under Chapter 35 to operate the bank and elect a board of not fewer than five persons to resolve the vacancy. If the conservator is unable to locate or elect five persons willing and able to serve as directors, the banking commissioner may close the bank for liquidation.

(e) Before each term to which a person is elected to serve as a director of a state bank, the person shall submit an affidavit for filing in the minutes of the bank stating that the person, to the

extent applicable:

(1) accepts the position and is not disqualified from serving in the position;

(2) will not violate or knowingly permit an officer, director, or employee of the bank to violate any law applicable to the conduct of business of the bank; and

(3) will diligently perform the duties of the position.

(f) The banking commissioner in the exercise of discretion may waive or reduce the residency requirements for directors set forth in Subsection (a).

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.0115, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 412, Sec. 2.10, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 27, eff. September 1, 2007.

Sec. 33.104. ADVISORY DIRECTOR. (a) An advisory director is not considered a director if the advisory director:

(1) is not elected by the shareholders of the bank;

(2) does not vote on matters before the board or a committee of the board;

(3) is not counted for purposes of determining a quorum of the board or committee; and

(4) provides solely general policy advice to the board.

(b) A state bank may not disclose to an advisory director confidential information pertaining to the bank or the bank's customers unless:

(1) the board adopts a resolution that designates the advisory director as a person who is officially connected to the bank and that describes the purpose for disclosure of the information, which must be a reasonable business purpose; and

(2) the disclosure is made under a written confidentiality agreement between the bank and the advisory director.

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. 28, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 5, eff. June 14, 2013.

Sec. 33.105. REQUIRED MONTHLY BOARD MEETING. (a) Except as provided by Subsection (b), the board of a state bank shall hold at least one regular meeting each month.

(b) On application by the board, the banking commissioner may grant the board approval to hold regular meetings on a less frequent basis than the period prescribed by Subsection (a). The commissioner may revoke or modify a prior approval granted under this subsection if the commissioner determines that more frequent regular meetings of the board are necessary to promote the safety and soundness of the bank.

(c) At each regular meeting the board shall review and approve the minutes of the prior meeting and review the operations, activities, and financial condition of the bank. The board may designate a committee from among its members to perform those duties and approve or disapprove the committee's report at each regular meeting. Each action of the board must be recorded in its minutes.

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

Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 14, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 6, eff. June 14, 2013.

Sec. 33.106. OFFICERS. (a) The board shall annually appoint the officers of the bank, who serve at the will of the board. Unless the banking commissioner consents otherwise in writing, a person may not serve as an officer of the state bank if:

(1) the person is the subject of an order described by Section 35.007(a); or

(2) the person has been convicted of a felony.

(b) The bank must have a principal executive officer primarily responsible for the execution of board policies and operation of the bank and an officer responsible for the maintenance and storage of all corporate books and records of the bank and for required

attestation of signatures. Those positions may not be held by the same person. The board may appoint other officers of the bank as the board considers necessary.

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. 5, eff. September 1, 2017.

Sec. 33.107. LIMITATION ON ACTION OF OFFICER OR EMPLOYEE IN RELATION TO ASSET OR LIABILITY. Unless expressly authorized by a resolution of the board recorded in its minutes, an officer or employee may not create or dispose of a bank asset or create or incur a liability on behalf of the bank.

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

Sec. 33.108. CRIMINAL OFFENSES. (a) An officer, director, employee, or shareholder of a state bank commits an offense if the person knowingly:

(1) conceals information or a fact, or removes, destroys, or conceals a book or record of the bank for the purpose of concealing information or a fact, from the banking commissioner or an agent of the banking commissioner; or

(2) removes, destroys, or conceals any book or record of the bank that is material to a pending or anticipated legal or administrative proceeding.

(b) An officer, director, or employee of a state bank commits an offense if the person:

(1) knowingly makes a false entry in a book, record, report, or statement of the bank; or

(2) violates or knowingly participates in a violation of, or permits another of the bank's officers, directors, or employees to violate, the prohibition on lending trust funds under Section 113.052, Property Code.

(c) An offense under this section is a felony of the third degree.

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. 29, eff. September 1, 2007.

Sec. 33.109. TRANSACTIONS WITH MANAGEMENT AND AFFILIATES. (a) Without the prior approval of a disinterested majority of the board recorded in the minutes or, if a disinterested majority cannot be obtained, the prior written approval of the banking commissioner, a state bank may not directly or indirectly:

(1) sell or lease an asset of the bank to an officer, director, or principal shareholder of the bank or of an affiliate of the bank; or

(2) purchase or lease an asset in which an officer, director, or principal shareholder of the bank or of an affiliate of the bank has an interest.

(b) An officer or director of the bank who knowingly participates in or permits a violation of this section commits an offense. An offense under this subsection is a felony of the third degree.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 2.11, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 30, eff. September 1, 2007.

SUBCHAPTER C. LIMITED BANKING ASSOCIATION

Sec. 33.201. LIABILITY OF PARTICIPANTS AND MANAGERS. (a) A participant or manager of a limited banking association is not liable for a debt, obligation, or liability of the limited banking association, including a debt, obligation, or liability under a judgment, decree, or order of court. A participant or a manager of a limited banking association is not a proper party to a proceeding by or against a limited banking association unless the object of the proceeding is to enforce a participant's or manager's right against or liability to a limited banking association.

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

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

Sec. 33.204. MANAGEMENT OF LIMITED BANKING ASSOCIATION. (a) Management of a limited banking association is vested in a board of managers elected by the participants as prescribed by the bylaws.

(b) A board of managers operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, and responsibilities, as a board of directors of a banking association, and a manager must meet the qualifications for a director under Section 33.103.

(c) The certificate of formation, bylaws, and participation agreement of a limited banking association may use "director" instead of "manager" and "board" instead of "board of managers."

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. 32, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 11, eff. June 14, 2013.

Sec. 33.206. INTEREST IN LIMITED BANKING ASSOCIATION; TRANSFERABILITY OF INTEREST. (a) The interest of a participant in a limited banking association is the personal property of the participant and may be transferred as provided by the bylaws or the participation agreement.

(b) The bylaws or the participation agreement may not require the consent of any other participant in order for a participant to transfer participation shares, including voting rights.

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. 33, eff. September 1, 2007.

Sec. 33.208. DISSOLUTION. The bylaws or the participation agreement may not require automatic termination, dissolution, or suspension of the limited banking association on the death, disability, bankruptcy, expulsion, or withdrawal of a participant, or on the happening of any other event other than the passage of 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. 34, eff. September 1, 2007.

Sec. 33.209. ALLOCATION OF PROFITS AND LOSSES. The profits and losses of a limited banking association may be allocated among the participants and among classes of participants as provided by the participation agreement. Without the prior written approval of the banking commissioner to use a different allocation method, the profits and losses must be allocated according to the relative interests of the participants as reflected in the certificate of formation and related documents filed with and approved by the banking commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 12, eff. June 14, 2013.

Sec. 33.210. DISTRIBUTIONS. Subject to Section 32.103, distributions of cash or other assets of a limited banking association may be made to the participants as provided by the participation agreement. Without the prior written approval of the banking commissioner to use a different distribution method, distributions must be made to the participants according to the relative interests of the participants as reflected in the certificate of formation and related documents filed with and approved by the banking commissioner.

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

Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 13, eff. June 14, 2013.

Sec. 33.211. APPLICATION OF OTHER PROVISIONS TO LIMITED BANKING ASSOCIATIONS. For purposes of the provisions of Subtitle A and this subtitle other than this subchapter, as the context requires:

(1) a manager is considered to be a director and the board of managers is considered to be the board of directors;

(2) a participant is considered to be a shareholder;

(3) a participation share is considered to be a share; and

(4) a distribution is considered to be a dividend.

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. 35, eff. September 1, 2007.

CHAPTER 34. INVESTMENTS, LOANS, AND DEPOSITS

SUBCHAPTER A. ACQUISITION AND OWNERSHIP OF BANK FACILITIES AND OTHER REAL PROPERTY

Sec. 34.001. DEFINITION. In this subchapter, "bank facility" means real property, including an improvement, that a state bank owns or leases, to the extent the lease or the leasehold improvement is capitalized, for the purpose of:

(1) providing space for bank employees to perform their duties and for bank employees and customers to park;

(2) conducting bank business, including meeting the reasonable needs and convenience of the public and the bank's customers, computer operations, document and other item processing, maintenance and storage of foreclosed collateral pending disposal, and record retention and storage;

(3) holding, improving, and occupying as an incident to future expansion of the bank's facilities; or

(4) conducting another activity authorized by rules adopted under this subtitle.

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

Sec. 34.002. INVESTMENT IN BANK FACILITIES. (a) Without the prior written approval of the banking commissioner, a state bank may not directly or indirectly invest an amount in excess of its unimpaired capital and surplus in bank facilities, furniture, fixtures, and equipment. Except as otherwise provided by rules adopted under this subtitle, in computing this limitation the bank:

(1) shall include:

(A) its direct investment in bank facilities;

(B) an investment in equity or investment securities of a company holding title to a facility used by the bank for a purpose specified by Section 34.001;

(C) a loan made by the bank to or on the security of equity or investment securities issued by a company holding title to a facility used by the bank; and

(D) any indebtedness incurred on bank facilities by a company:

(i) that holds title to the facility;

(ii) that is an affiliate of the bank; and

(iii) in which the bank is invested in the manner described by Paragraph (B) or (C); and

(2) may exclude an amount included under Subdivisions (1)(B)-(D) to the extent a lease of a facility from the company holding title to the facility is capitalized on the books of the bank.

(b) Real property acquired for the purposes described by Section 34.001(3) and not improved and occupied by the bank ceases to be a bank facility on the third anniversary of the date of its acquisition unless the banking commissioner on application grants written approval to further delay in the improvement and occupation of the property by the bank.

(c) A bank shall comply with regulatory accounting principles in accounting for its investment in and depreciation of bank facilities, furniture, fixtures, and equipment.

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

Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 3, eff. September 1, 2007.

Sec. 34.003. OTHER REAL PROPERTY. (a) A state bank may not acquire real property except:

(1) as permitted by this subtitle or rules adopted under this subtitle;

(2) with the prior written approval of the banking commissioner; or

(3) as necessary to avoid or minimize a loss on a loan or investment previously made in good faith.

(b) With the prior written approval of the banking commissioner, a state bank may:

(1) exchange real property for other real property or personal property;

(2) invest additional money in or improve real property acquired under this subsection or Subsection (a); or

(3) acquire additional real property to avoid or minimize loss on real property acquired as permitted by Subsection (a).

(c) A state bank shall dispose of real property subject to this section not later than the fifth anniversary of the date the real property:

(1) was acquired except as otherwise provided by rules adopted under this subtitle;

(2) ceases to be used as a bank facility; or

(3) ceases to be a bank facility as provided by Section 34.002(b).

(d) The banking commissioner on application may grant one or more extensions of time for disposing of real property if the banking commissioner determines that:

(1) the bank has made a good faith effort to dispose of the real property; or

(2) disposal of the real property would be detrimental to the bank.

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

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 7, eff. June 14, 2013.

Sec. 34.004. RETENTION OF NONPARTICIPATING ROYALTY INTERESTS. (a) Notwithstanding Section 34.003(a), a state bank may hold

nonparticipating royalty interests if:

(1) the state bank acquires the interest pursuant to Section 34.003(a)(3) or retains the interest in a sale of property acquired under that section;

(2) the interest is nonparticipating due to the fact the interest:

(A) is nonpossessory;

(B) does not bear executive rights, the right of ingress and egress, the right to receive bonus payments, or the right to receive delay rentals; and

(C) is accordingly not subject to expenses of exploration, development, production, operation, maintenance, or abandonment, or other expenses associated with extracting and marketing the minerals subject to the interest;

(3) the interest is reasonably valued on the books of the state bank for not more than a nominal amount, and the aggregate amount of earnings from such interests is separately disclosed in the annual financial statements of the state bank;

(4) the state bank does not make any new investments relating to the interests without the approval of the banking commissioner; and

(5) the banking commissioner determines that the possession of such interests is not inconsistent with the safety and soundness of the state bank.

(b) The banking commissioner may order a state bank that holds nonparticipating royalty interests to divest such interests at any time if the banking commissioner determines that continued ownership of such interests is detrimental to the state bank.

(c) Subject to compliance with this section, nonparticipating royalty interests are not considered to be real property for purposes of this subtitle.

Added by Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 4, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 8, eff. June 14, 2013.

SUBCHAPTER B. INVESTMENTS

Sec. 34.101. SECURITIES. (a) A state bank may purchase and sell securities without recourse solely on the order and for the account of a customer.

(b) Except as otherwise provided by this subtitle or rules adopted under this subtitle, a state bank may not:

(1) underwrite an issue of securities; or

(2) invest its money in equity securities except as necessary to avoid or minimize a loss on a loan or investment previously made in good faith.

(c) A state bank may purchase investment securities for its own account under limitations and restrictions prescribed by rules adopted under this subtitle. Except as otherwise provided by this section, the amount of the investment securities of any one obligor or maker held by the bank for its own account may not exceed an amount equal to 15 percent of the bank's unimpaired capital and surplus. The banking commissioner may authorize investments in excess of this limitation on written application if the banking commissioner determines that:

(1) the excess investment is not prohibited by other applicable law; and

(2) the safety and soundness of the requesting state bank is not adversely affected.

(d) Notwithstanding Subsections (a)-(c), a state bank may, without limit and subject to the exercise of prudent banking judgment, deal in, underwrite, or purchase for its own account:

(1) bonds and other legally created general obligations of a state, an agency or political subdivision of a state, the United States, or an instrumentality of the United States;

(2) obligations that this state, an agency or political subdivision of this state, the United States, or an instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee;

(3) securities that are offered and sold under 15 U.S.C. Section 77d(5);

(4) mortgage related securities or small business related securities, as those terms are defined by 15 U.S.C. Section 78c(a);

(5) mortgages, obligations, or other securities that are or ever have been sold by the Federal Home Loan Mortgage Corporation under 12 U.S.C. Sections 1434 and 1455;

(6) obligations, participation, or other instruments of or

issued by the Federal National Mortgage Association or the Government National Mortgage Association;

(7) obligations issued by the Federal Agricultural Mortgage Corporation, the Federal Farm Credit Banks Funding Corporation, or a Federal Home Loan Bank;

(8) obligations of the Federal Financing Bank or the Environmental Financing Authority;

(9) obligations or other instruments or securities of the Student Loan Marketing Association;

(10) qualified Canadian government obligations, as defined by 12 U.S.C. Section 24; or

(11) if the state bank is well capitalized, as defined by Section 38, Federal Deposit Insurance Act (12 U.S.C. Section 1831o), obligations, including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of 26 U.S.C. Section 142(b)(1), issued by or on behalf of a state or a political subdivision of a state, including a municipal corporate instrumentality of one or more states or a public agency or authority of a state or political subdivision of a state.

(e) Notwithstanding Subsections (a) and (b), subject to the exercise of prudent banking judgment, a state bank may deal in, underwrite, or purchase for its own account, including for purposes of Subsection (c) obligations as to which the bank is under commitment, the following:

(1) obligations issued by a development bank, corporation, or other entity created by international agreement if the United States is a member and a capital stock shareholder;

(2) obligations issued by a state or political subdivision or an agency of a state or political subdivision for housing, university, or dormitory purposes, that are at the time eligible for purchase by a state bank for its own account; or

(3) bonds, notes, and other obligations issued by the Tennessee Valley Authority or by the United States Postal Service.

(f) A state bank may not invest more than an amount equal to 25 percent of the bank's unimpaired capital and surplus in investment grade adjustable rate preferred stock and money market (auction rate) preferred stock.

(g) A state bank may deposit money in a federally insured financial institution, a Federal Reserve Bank, or a Federal Home Loan Bank without limitation.

(h) The finance commission may adopt rules to administer and carry out this section, including rules to:

(1) define or further define terms used by this section;

(2) establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of securities; and

(3) limit or expand investment authority for state banks for particular classes or categories of securities.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 9, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 5, eff. September 1, 2007.

Sec. 34.102. TRANSACTION IN BANK SHARES. (a) A state bank may not acquire a lien by pledge or otherwise on its own shares, or otherwise purchase or acquire title to its own shares, except:

(1) as necessary to avoid or minimize a loss on a loan or investment previously made in good faith; or

(2) as provided by Subsection (b).

(b) With the prior written approval of the banking commissioner or as permitted by rules adopted under this subtitle, a state bank may acquire title to its own shares and hold those shares as treasury stock. Treasury stock acquired under this subsection is not considered an equity investment.

(c) If a state bank acquires a lien on or title to its own shares under this section, the lien may not by its original terms extend for more than two years. Except with the prior written approval of the banking commissioner, the bank may not hold title to its own shares for more than one year.

(d) A state bank may make loans on the collateral security of securities issued by an affiliate, if the loan is subject to and in compliance with the provisions of Sections 23A and 23B, Federal Reserve Act (12 U.S.C. Sections 371c and 371c-1), as amended, applicable to nonmember insured state banks by virtue of Section 18(j)(1), Federal Deposit Insurance Act (12 U.S.C. Section 1828(j)(1)), as amended.

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

by Acts 2001, 77th Leg., ch. 412, Sec. 2.12, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 36, eff. September 1, 2007.

Sec. 34.103. BANK SUBSIDIARIES. (a) Subject to this section and except as otherwise provided by this subtitle or rules adopted under this subtitle, a state bank may conduct any activity or make any investment through an operating subsidiary that a state bank or a bank holding company, including a financial holding company, is authorized to conduct or make under state or federal law if the operating subsidiary is adequately empowered and appropriately licensed to conduct its business.

(b) Except for investment in a subsidiary engaging solely in activities that may be engaged in directly by the bank and that are conducted on the same terms and conditions that govern the conduct of the activities by the bank, a state bank without the prior written approval of the banking commissioner may not invest more than an amount equal to 10 percent of its unimpaired capital and surplus in a single subsidiary. For purposes of this subsection, the amount of a state bank's investment in a subsidiary is the sum of the amount of the bank's investment in securities issued by the subsidiary and any loans and extensions of credit from the bank to the subsidiary.

(c) A state bank may not establish or acquire a subsidiary or a controlling interest in a subsidiary that engages in activities as principal in which the bank is prohibited from engaging directly unless:

(1) the state bank's investment in the subsidiary has been approved by the Federal Deposit Insurance Corporation under Section 24, Federal Deposit Insurance Act (12 U.S.C. Section 1831a); or

(2) with respect to a subsidiary engaged in activities as principal that a national bank may conduct only through a financial subsidiary, including firm underwriting of equity securities other than as permitted by Section 34.101, and not otherwise engaged in activities as principal that are impermissible for a state bank or a financial subsidiary of a national bank, the subsidiary's activities and the bank's investment are in compliance with the restrictions and requirements of Section 46, Federal Deposit Insurance Act (12 U.S.C. Section 1831w).

(d) Except as otherwise provided by this subtitle or a rule adopted under this subtitle, a state bank may not make a non-controlling minority investment in equity securities of a company unless:

(1) the investment or company is described by Subsection (c)(2) or Section 34.104 or 34.105;

(2) the company engages solely in activities that are part of or incidental to the permissible business of a state bank under this subtitle and:

(A) the state bank is adequately empowered to prevent the company from engaging in activities not part of or incidental to the permissible business of a state bank or, as a practical matter, is otherwise enabled to withdraw or liquidate its investment in the company in such an event;

(B) as a legal and accounting matter, the loss exposure of the state bank with respect to the activities of the company is limited and does not include any open-ended liability for an obligation of the company; and

(C) the investment is convenient or useful to the state bank in carrying out its business and is not a mere passive investment unrelated to the bank's banking business; or

(3) the investment is made indirectly through an operating subsidiary in equity securities issued by:

(A) another bank;

(B) a company that engages solely in an activity that is permissible for a bank service corporation or a bank holding company subsidiary; or

(C) a company that engages solely in activities as agent or trustee or in a brokerage, custodial, advisory, or administrative capacity, or in a substantially similar capacity.

(e) A state bank that intends to acquire, establish, or perform new activities through a subsidiary shall submit a letter to the banking commissioner describing in detail the proposed activities of the subsidiary. The bank may acquire or establish a subsidiary or perform new activities in an existing subsidiary beginning on the 31st day after the date the banking commissioner receives the bank's letter unless the banking commissioner specifies an earlier or later date. The banking commissioner may extend the 30-day period on a determination that the bank's letter raises issues that require additional information or additional time for analysis. If the

period is extended, the bank may acquire or establish a subsidiary, or may perform new activities in an existing subsidiary, only on prior written approval of the banking commissioner.

(f) A subsidiary of a state bank is subject to regulation by the banking commissioner to the extent provided by Chapter 11 or 12, this subtitle, or rules adopted under this subtitle. In the absence of limiting rules, the banking commissioner may regulate a subsidiary as if it were a state bank.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 10, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 6, eff. September 1, 2007.

Sec. 34.104. MUTUAL FUNDS. (a) A state bank may invest for its own account in equity securities of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.) and the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) if the portfolio of the investment company consists wholly of investments in which the bank could invest directly for its own account.

(b) If the portfolio of an investment company described by Subsection (a) consists wholly of investments in which the bank could invest directly without limitation, the bank may invest in the investment company without limitation.

(c) The bank may invest not more than an amount equal to 15 percent of the bank's unimpaired capital and surplus in an investment company described by Subsection (a) the portfolio of which contains an investment or obligation in which the bank could not invest directly without limitation under this chapter.

(d) A state bank that invests in an investment company as provided by Subsection (c) shall periodically determine that its pro rata share of any security in the portfolio of the investment company combined with the bank's pro rata share of that security held by all other investment companies in which the bank has invested and with the bank's own direct investment and loan holdings is not in excess of applicable investment and lending limitations.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 7, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 37, eff. September 1, 2007.

Sec. 34.105. OTHER DIRECT EQUITY INVESTMENTS. (a) A state bank may purchase for its own account equity securities of any class issued by:

(1) a bank service corporation, except that the bank may not invest more than an amount equal to 15 percent of the bank's unimpaired capital and surplus in a single bank service corporation or more than an amount equal to five percent of its assets in all bank service corporations;

(2) an agricultural credit corporation, except that the bank may not invest more than an amount equal to 30 percent of the bank's unimpaired capital and surplus in the agricultural credit corporation unless the bank owns at least 80 percent of the equity securities of the agricultural credit corporation;

(3) a small business investment company if the aggregate investment does not exceed an amount equal to 10 percent of the bank's unimpaired capital and surplus;

(4) a banker's bank if the aggregate investment does not exceed an amount equal to 15 percent of the bank's unimpaired capital and surplus or result in the bank acquiring or retaining ownership, control, or power to vote more than five percent of any class of voting securities of the banker's bank; or

(5) a housing corporation if the sum of the amount of investment and the amount of loans and commitments for loans to the housing corporation does not exceed an amount equal to 10 percent of the bank's unimpaired capital and surplus.

(b) On written application, the banking commissioner may authorize investments in excess of a limitation of Subsection (a) if the banking commissioner concludes that:

(1) the excess investment is not precluded by other applicable law; and

(2) the safety and soundness of the requesting bank would not be adversely affected.

(c) For purposes of this section:

(1) "Agricultural credit corporation" means a company organized solely to make loans to farmers and ranchers for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock.

(2) "Banker's bank" means a bank insured by the Federal Deposit Insurance Corporation or a bank holding company that owns or controls such an insured bank if:

(A) all equity securities of the bank or bank holding company, other than director's qualifying shares or shares issued under an employee compensation plan, are owned by depository institutions or depository institution holding companies; and

(B) the bank or bank holding company and all its subsidiaries are engaged exclusively in providing:

(i) services to or for other depository institutions, depository institution holding companies, and the directors, officers, and employees of other depository institutions and depository institution holding companies; and

(ii) correspondent banking services at the request of other depository institutions, depository institution holding companies, or their subsidiaries.

(3) "Bank service corporation" has the meaning assigned by the Bank Service Corporation Act (12 U.S.C. Section 1861 et seq.) or a successor to that Act.

(4) "Housing corporation" means a corporation organized under Title IX of the Housing and Urban Development Act of 1968 (42 U.S.C. Section 3931 et seq.), a partnership, limited partnership, or joint venture organized under Section 907(a) or (c) of that Act (42 U.S.C. Section 3937(a) or (c)), or a housing corporation organized under the laws of this state to engage in or finance low-income and moderate-income housing developments or projects.

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

Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 8, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 38, eff. September 1, 2007.

Sec. 34.106. INVESTMENTS TO PROMOTE COMMUNITY DEVELOPMENT. (a)

A state bank may make investments of a predominantly civic, community, or public nature, including investments providing housing, services, or jobs or promoting the welfare of low-income and moderate-income communities or families.

(b) The bank may make the investments directly or by purchasing equity securities in an entity primarily engaged in making those investments. The bank may not make an investment that would expose the bank to unlimited liability.

(c) A bank may serve as a community partner and make investments in a community partnership, as those terms are defined by the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103-325).

(d) A bank's aggregate investments under this section may not exceed an amount equal to 15 percent of the bank's unimpaired capital and surplus.

(e) Notwithstanding any other law, a bank's exposure to a single project or entity described by this section, including all investments, loans, and commitments for loans, may not exceed 25 percent of the bank's unimpaired capital and surplus without the prior authorization of the banking commissioner in response to a written application.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 2.13, eff. Sept. 1, 2001. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 4 (S.B. 726), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 4 (S.B. 726), Sec. 2, eff. September 1, 2019.

Sec. 34.107. ENGAGING IN COMMERCE PROHIBITED. (a) A state bank may not buy, sell, or otherwise deal in goods in trade or commerce or own or operate a business not part of the business of banking except:

(1) as necessary to avoid or minimize a loss on a loan or investment previously made in good faith; or

(2) as otherwise provided by this subtitle or rules adopted under this subtitle.

(b) Engaging in an approved activity, directly or through a

subsidiary, that is a financial activity or incidental or complementary to a financial activity, whether as principal or agent, is not considered to be engaging in commerce.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 11, eff. Sept. 1, 2001.

SUBCHAPTER C. LOANS

Sec. 34.201. LENDING LIMITS. (a) Without the prior written approval of the banking commissioner, the total loans and extensions of credit by a state bank to a person outstanding at one time may not exceed an amount equal to 25 percent of the bank's unimpaired capital and surplus. This limitation does not apply to:

(1) liability as endorser or guarantor of commercial or business paper discounted by or assigned to the bank by its owner who has acquired it in the ordinary course of business;

(2) indebtedness evidenced by bankers' acceptances as described by 12 U.S.C. Section 372 and issued by other banks;

(3) indebtedness secured by a bill of lading, warehouse receipt, or similar document transferring or securing title to readily marketable goods, except that:

(A) the goods must be insured if it is customary to insure those goods; and

(B) the aggregate indebtedness of a person under this subdivision may not exceed an amount equal to 50 percent of the bank's unimpaired capital and surplus;

(4) indebtedness evidenced by notes or other paper secured by liens on agricultural products in secure and properly documented storage in bonded warehouses or elevators if the value of the collateral is not less than 125 percent of the amount of the indebtedness and the bank's interest in the collateral is adequately insured against loss, except that the aggregate indebtedness of a person under this subdivision may not exceed an amount equal to 50 percent of the bank's unimpaired capital and surplus;

(5) indebtedness of another depository institution arising out of loans with settlement periods of less than one week;

(6) indebtedness arising out of the daily transaction of the business of a clearinghouse association in this state;

(7) liability under an agreement by a third party to

repurchase from the bank an investment security listed in Section 34.101(d) to the extent that the agreed repurchase price does not exceed the original purchase price to the bank or the market value of the investment security;

(8) the portion of an indebtedness that this state, an agency or political subdivision of this state, the United States, or an instrumentality of the United States has unconditionally agreed to repay, purchase, insure, or guarantee;

(9) indebtedness secured by securities listed in Section 34.101(d) to the extent that the market value of the securities equals or exceeds the indebtedness;

(10) the portion of an indebtedness that is fully secured by a segregated deposit account in the lending bank;

(11) loans and extensions of credit arising from the purchase of negotiable or nonnegotiable installment consumer paper that carries a full recourse endorsement or unconditional guarantee by the person transferring the paper if:

(A) the bank's files or the knowledge of its officers of the financial condition of each maker of the consumer paper is reasonably adequate; and

(B) an officer of the bank designated for that purpose by the board certifies in writing that the bank is relying primarily on the responsibility of each maker for payment of the loans or extensions of credit and not on a full or partial recourse endorsement or guarantee by the transferor;

(12) the portion of an indebtedness in excess of the limitation of this subsection that is fully secured by marketable securities or bullion with a market value at least equal to the amount of the overage, as determined by reliable and continuously available price quotations, except that the exempted indebtedness or overage of a person under this subdivision may not exceed an amount equal to 15 percent of the bank's unimpaired capital and surplus;

(13) indebtedness of an affiliate of the bank if the transaction with the affiliate is subject to the restrictions and limitations of 12 U.S.C. Section 371c;

(14) indebtedness of an operating subsidiary of the bank other than a subsidiary described by Section 34.103(c)(2); and

(15) the portion of the indebtedness of a person secured in good faith by a purchase money lien taken by the bank in exchange for the sale of real or personal property owned by the bank if the sale

is in the best interest of the bank.

(b) The finance commission may adopt rules to administer this section, including rules to:

(1) define or further define terms used by this section;

(2) establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of loans or extensions of credit; and

(3) establish collective lending and investment limits.

(c) The banking commissioner may determine whether a loan or extension of credit putatively made to a person will be attributed to another person for purposes of this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 12, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 10, eff. September 1, 2007.

Sec. 34.202. VIOLATION OF LENDING LIMIT. (a) An officer, director, or employee of a state bank who approves or participates in the approval of a loan with actual knowledge that the loan violates Section 34.201 is jointly and severally liable to the bank for the lesser of the amount by which the loan exceeded applicable lending limits or the bank's actual loss. The person remains liable for that amount until the loan and all prior indebtedness of the borrower to the bank have been fully repaid.

(b) The bank may initiate a proceeding to collect an amount due under this section at any time before the fourth anniversary of the date the borrower defaults on the subject loan or any prior indebtedness.

(c) A person who is liable for and pays amounts to the bank under this section is entitled to an assignment of the bank's claim against the borrower to the extent of the payments.

(d) For purposes of this section, an officer, director, or employee of a state bank is presumed to know the amount of the bank's lending limit under Section 34.201(a) and the amount of the borrower's aggregate outstanding indebtedness to the bank immediately before a new loan or extension of credit to that borrower.

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. 39, eff. September 1, 2007.

Sec. 34.203. LOAN EXPENSES AND FEES. (a) A bank may require a borrower to pay all reasonable expenses and fees incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of a loan, regardless of whether those expenses or fees are paid to third parties. A fee charged by the bank under this section may not exceed the cost the bank reasonably expects to incur in connection with the transaction to which the fee relates. Payment for those expenses may be:

(1) collected by the bank from the borrower and:

(A) retained by the bank; or

(B) paid to a person rendering services for which a charge has been made; or

(2) paid directly by the borrower to a third party to whom they are payable.

(b) This section does not authorize the bank to charge its borrower for payment of fees and expenses to an officer or director of the bank for services rendered in the person's capacity as an officer or director.

(c) A bank may charge a penalty for prepayment or late payment. Only one penalty may be charged by the bank on each past due payment. Unless otherwise agreed in writing, prepayment of principal must be applied on the final installment of the note or other obligation until that installment is fully paid, and further prepayments must be applied on installments in the inverse order of their maturity.

(d) Fees and expenses charged and collected as provided by this section are not considered a part of the interest or compensation charged by the bank for the use, forbearance, or detention of money.

(e) To the extent of any conflict between this section and a provision of Subtitle B, Title 4, the provision of Subtitle B, Title 4, prevails.

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. 40, eff. September 1, 2007.

Sec. 34.204. LEASE FINANCING TRANSACTION. (a) Subject to rules adopted under this subtitle, a state bank may, directly or indirectly through an operating subsidiary, provide the equivalent of a financing transaction by acting as lessor under a lease for the benefit of a customer.

(b) Without the written approval of the banking commissioner to continue holding property acquired for leasing purposes under this subsection, the bank may not hold personal property more than six months or real property more than two years after the date of expiration of the original or any extended or renewed lease period agreed to by the customer for whom the property was acquired or by a subsequent lessee.

(c) A rental payment received by the bank in a lease financing transaction under this section is considered to be rent and not interest or compensation for the use, forbearance, or detention of money. However, a lease financing transaction is considered to be a loan or extension of credit for purposes of Sections 34.201 and 34.202.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 13, eff. Sept. 1, 2001.

SUBCHAPTER D. DEPOSITS

Sec. 34.301. NATURE OF DEPOSIT CONTRACT. (a) A deposit contract between a bank and an account holder is considered a contract in writing for all purposes and may be evidenced by one or more agreements, deposit tickets, signature cards, or notices as provided by Section 34.302, or by other documentation as provided by law.

(b) A cause of action for denial of deposit liability on a deposit contract without a maturity date does not accrue until the bank has denied liability and given notice of the denial to the account holder. A bank that provides an account statement or passbook to the account holder is considered to have denied liability and given the notice as to any amount not shown on the statement or passbook.

(c) To the extent provided by Section 4.102(c), Business &

Commerce Code, the laws of this state govern a deposit contract between a bank and a consumer account holder if the branch or separate office of the bank that accepts the deposit contract is located in this state.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.012, eff. Sept. 1, 1999.

Sec. 34.302. AMENDMENT OF DEPOSIT CONTRACT. (a) A bank and its account holder may amend the deposit contract by agreement or as permitted by Subsection (b) or other law.

(b) A bank may amend a deposit contract by mailing a written notice of the amendment to the account holder, separately or as an enclosure with or part of the account holder's statement of account or passbook. The notice must include the text and effective date of the amendment. The bank is required to deliver the notice to only one of the account holders of a deposit account that has more than one account holder. The effective date may not be earlier than the 30th day after the date of mailing the notice unless the amendment:

(1) is made to comply with a statute or rule that authorizes an earlier effective date;

(2) does not reduce the interest rate on the account or otherwise adversely affect the account holder; or

(3) is made for a reason relating to security of an account.

(c) Except for a disclosure required to be made under Section 34.303 or the Truth in Savings Act (12 U.S.C. Section 4301 et seq.) or other federal law, before renewal of an account a notice of amendment is not required under Subsection (b) for:

(1) a change in the interest rate on a variable-rate account, including a money market or negotiable order of withdrawal account;

(2) a change in a term for a time account with a maturity of one month or less if the deposit contract authorizes the change in the term; or

(3) a change contemplated and permitted by the original contract.

(d) An amendment under Subsection (b) may reduce the rate of interest or eliminate interest on an account without a maturity date.

(e) Amendment of a deposit contract made in compliance with this section is not a violation of the Deceptive Trade Practices-Consumer Protection Act (Section 17.41 et seq., Business & Commerce Code).

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

Sec. 34.303. FEES; DISCLOSURES. (a) Except as otherwise provided by law, a bank may charge an account holder a fee, service charge, or penalty relating to service or activity of a deposit account, including a fee for an overdraft, insufficient fund check, or stop payment order.

(b) Except as otherwise provided by the Truth in Savings Act (12 U.S.C. Section 4301 et seq.) or other federal law, a bank shall disclose the amount of each fee, charge, or penalty related to an account or, if the amount of a fee, charge, or penalty cannot be stated, the method of computing the fee, charge, or penalty. The disclosure must be made by written notice delivered or mailed to each customer opening an account not later than the 10th business day after the date the account is opened. A bank that increases or adds a new fee, charge, or penalty shall give notice of the change to each affected account holder in the manner provided by Section 34.302(b) for notice of an amendment of a deposit contract.

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

Sec. 34.304. SECURING DEPOSITS. (a) A state bank may not create a lien on its assets or secure the repayment of a deposit except as authorized or required by this section, rules adopted under this subtitle, or other law.

(b) A state bank may pledge its assets to secure a deposit of:

(1) any state or an agency, political subdivision, or instrumentality of any state;

(2) the United States or an agency or instrumentality of the United States;

(3) any federally recognized Indian tribe; or

(4) another entity to the same extent and subject to the same limitations as may be authorized by the law of this state or of the United States for any other depository institution doing business

in this state.

(c) This section does not prohibit the pledge of assets to secure the repayment of money borrowed or the purchase of excess deposit insurance from a private insurance company.

(d) An act, deed, conveyance, pledge, or contract in violation of this section is void.

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

Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 11, eff. September 1, 2007.

Sec. 34.305. DEPOSIT ACCOUNT OF MINOR. (a) Except as otherwise provided by this section, a bank lawfully doing business in this state may enter into a deposit account with a minor as the sole and absolute owner of the account and may pay checks and withdrawals and otherwise act with respect to the account on the order of the minor. A payment or delivery of rights to a minor who holds a deposit account evidenced by an acquittance signed by the minor discharges the bank to the extent of the payment made or rights delivered.

(b) The disabilities of minority of a minor who is the sole and absolute owner of the deposit account are removed for the limited purpose of enabling:

(1) the minor to enter into a depository contract with the bank; and

(2) the bank to enforce the contract against the minor, including collection of an overdraft or account fee and submission of account history to an account reporting agency or credit reporting bureau.

(c) A parent or legal guardian of a minor may deny the minor's authority to control, transfer, draft on, or make a withdrawal from the minor's deposit account by notifying the bank in writing. On receipt of the notice by the bank, the minor may not control, transfer, draft on, or make a withdrawal from the account during minority except with the joinder of a parent or legal guardian of the minor.

(d) If a minor with a deposit account dies, the acquittance of the minor's parent or legal guardian discharges the liability of the

bank to the extent of the acquittance, except that the aggregate discharges under this subsection may not exceed $3,000.

(e) Subsection (a) does not authorize a loan to the minor by the bank, whether on pledge of the minor's savings account or otherwise, or bind the minor to repay a loan made except as provided by Subsection (b) or other law or unless the depository institution has obtained the express consent and joinder of a parent or legal guardian of the minor. This subsection does not apply to an inadvertent extension of credit because of an overdraft from insufficient funds, a returned check or deposit, or another shortage in a depository account resulting from normal banking operations.

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

Sec. 34.306. TRUST ACCOUNT WITH LIMITED DOCUMENTATION. (a) Subject to Subchapter B, Chapter 111, and Chapters 112 and 113, Estates Code, a bank may accept and administer a deposit account:

(1) that is opened with the bank by one or more persons expressly as a trustee for one or more other named persons; and

(2) for which further notice of the existence and terms of a trust is not given in writing to the bank.

(b) For a deposit account that is opened with a bank by one or more persons expressly as a trustee for one or more other named persons under or purporting to be under a written trust agreement, the trustee may provide the bank with a certificate of trust to evidence the trust relationship. The certificate must be an affidavit of the trustee and must include the effective date of the trust, the name of the trustee, the name of or method for choosing successor trustees, the name and address of each beneficiary, the authority granted to the trustee, the disposition of the account on the death of the trustee or the survivor of two or more trustees, other information required by the bank, and an indemnification of the bank. The bank may accept and administer the account, subject to Subchapter B, Chapter 111, and Chapters 112 and 113, Estates Code, in accordance with the certificate of trust without requiring a copy of the trust agreement. The bank is not liable for administering the account as provided by the certificate of trust, even if the certificate of trust is contrary to the terms of the trust agreement, unless the bank has actual knowledge of the terms of the trust

agreement.

(c) On the death of the trustee or of the survivor of two or more trustees, the bank may pay all or part of the withdrawal value of the account with interest as provided by the certificate of trust. If the trustee did not deliver a certificate of trust, the bank's right to treat the account as owned by a trustee ceases on the death of the trustee. On the death of the trustee or of the survivor of two or more trustees, the bank, unless the certificate of trust provides otherwise, shall pay the withdrawal value of the account with interest in equal shares to the persons who survived the trustee, are named as beneficiaries in the certificate of trust, and can be located by the bank from its own records. If there is not a certificate of trust, payment of the withdrawal value and interest shall be made as provided by Subchapter B, Chapter 111, and Chapters 112 and 113, Estates Code. Any payment made under this section for all or part of the withdrawal value and interest discharges any liability of the bank to the extent of the payment. The bank may pay all or part of the withdrawal value and interest in the manner provided by this section, regardless of whether it has knowledge of a competing claim, unless the bank receives actual knowledge that payment has been restrained by court order.

(d) This section does not obligate a bank to accept a deposit account from a trustee who does not furnish a copy of the trust agreement or to search beyond its own records for the location of a named beneficiary.

(e) This section does not affect a contractual provision to the contrary that otherwise complies with the laws of this state.

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. 20.008, eff. September 1, 2015.

Sec. 34.307. RIGHT OF SET-OFF. (a) Except as otherwise provided by the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) or other federal law, a bank has a right of set-off, without further agreement or action, against all accounts owned by a depositor to whom or on whose behalf the bank has made an advance of money by loan, overdraft, or otherwise if the bank has previously disclosed

this right to the depositor. If the depositor defaults in the repayment or satisfaction of the obligation, the bank, without notice to or consent of the depositor, may set off or cancel on its books all or part of the accounts owned by the depositor and apply the value of the accounts in payment of and to the extent of the obligation.

(b) For purposes of this section, a default occurs when an obligor has failed to make a payment as provided by the terms of the loan or other credit obligation and a grace period provided for by the agreement or law has expired. An obligation is not required to be accelerated or matured for a default to authorize set-off of the depositor's obligation against the defaulted payment.

(c) A bank may not exercise its right of set-off under this section against an account unless the account is due the depositor in the same capacity as the defaulted credit obligation. A trust account for which a depositor is trustee, including a trustee under a certificate of trust delivered under Section 34.306(b), is not subject to the right of set-off under this section unless the trust relationship is solely evidenced by the account card as provided by Subchapter B, Chapter 111, and Chapters 112 and 113, Estates Code.

(d) This section does not limit the exercise of another right of set-off, including a right under contract or common law.

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. 20.009, eff. September 1, 2015.

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 an 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.

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; or

(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.

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.

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.

CHAPTER 36. DISSOLUTION AND RECEIVERSHIP

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 36.001. DEFINITION. In this chapter, "administrative expense" means:

(1) an expense designated as an administrative expense by Subchapter C or D;

(2) court costs and expenses of operation and liquidation of a bank estate;

(3) wages owed to an employee of a bank for services rendered within three months before the date the bank was closed for liquidation and not exceeding:

(A) $2,000 to each employee; or

(B) another amount set by rules adopted under this subtitle;

(4) current wages owed to a bank employee whose services are retained by the receiver for services rendered after the date the bank is closed for liquidation;

(5) an unpaid expense of supervision or conservatorship of the bank before its closing for liquidation; and

(6) any unpaid fees or assessments owed to the department.

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

Sec. 36.002. REMEDIES EXCLUSIVE. (a) Unless the banking commissioner so requests, a court may not:

(1) order the closing or suspension of operation of a state bank; or

(2) appoint for a state bank a receiver, supervisor, conservator, liquidator, or other person with similar responsibility.

(b) A person may not be designated a receiver, supervisor, conservator, or liquidator without the voluntary approval of the

banking commissioner.

(c) This chapter prevails over any conflicting law of this state.

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

Sec. 36.003. FEDERAL DEPOSIT INSURANCE CORPORATION AS LIQUIDATOR. (a) The banking commissioner without court action may tender a state bank that has been closed for liquidation to the Federal Deposit Insurance Corporation or its successor as receiver and liquidating agent if the deposits of the bank were insured by the Federal Deposit Insurance Corporation or its successor on the date of closing.

(b) After acceptance of tender of the bank, the Federal Deposit Insurance Corporation or its successor shall perform the acts and duties as receiver of the bank that it considers necessary or desirable and that are permitted or required by federal law or this chapter.

(c) If the Federal Deposit Insurance Corporation or its successor refuses to accept tender of the bank, the banking commissioner shall act as receiver.

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

Sec. 36.004. APPOINTMENT OF INDEPENDENT RECEIVER. (a) On request of the banking commissioner, the court in which a liquidation proceeding is pending may:

(1) appoint an independent receiver; and

(2) require a suitable bond of the independent receiver.

(b) On appointment of an independent receiver, the banking commissioner is discharged as receiver and remains a party to the liquidation proceeding with standing to initiate or contest any motion. The views of the banking commissioner are entitled to deference unless they are inconsistent with the plain meaning of this chapter.

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

Sec. 36.005. SUCCESSION OF TRUST POWERS. (a) If a state bank in the process of voluntary or involuntary dissolution and liquidation is acting as trustee, guardian, executor, administrator, or escrow agent, or in another fiduciary or custodial capacity, the banking commissioner may authorize the sale of the bank's administration of fiduciary accounts to a successor entity with fiduciary powers.

(b) The successor entity, without the necessity of action by a court or the creator or a beneficiary of the fiduciary relationship, shall:

(1) continue the office, trust, or fiduciary relationship; and

(2) perform all the duties and exercise all the powers connected with or incidental to the fiduciary relationship as if the successor entity had been originally designated as the fiduciary.

(c) This section applies to all fiduciary relationships, including a trust established for the benefit of a minor by court order under Section 142.005, Property Code. This section does not affect any right of a court or a party to the instrument governing the fiduciary relationship to subsequently designate another trustee as the successor fiduciary.

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

SUBCHAPTER B. VOLUNTARY DISSOLUTION

Sec. 36.101. INITIATING VOLUNTARY DISSOLUTION. (a) A state bank may initiate voluntary dissolution and surrender its charter as provided by this subchapter:

(1) with the approval of the banking commissioner;

(2) after complying with the provisions of the Business Organizations Code regarding board and shareholder approval for voluntary dissolution; and

(3) by filing the documents as provided by Section 36.102.

(b) The shareholders of a state bank initiating voluntary dissolution by resolution shall appoint one or more persons to act as the liquidating agent or committee. The liquidating agent or committee shall conduct the liquidation as provided by law and under the supervision of the bank's board. The board, in consultation with the banking commissioner, shall require the liquidating agent or

committee to give a suitable bond.

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. 49, eff. September 1, 2007.

Sec. 36.102. FILING RESOLUTIONS WITH BANKING COMMISSIONER. After resolutions to dissolve and liquidate a state bank have been adopted by the bank's board and shareholders, a majority of the directors shall verify and file with the banking commissioner certified copies of:

(1) the resolutions of the shareholders that:

(A) are adopted at a meeting for which proper notice was given or by unanimous written consent; and

(B) approve the dissolution and liquidation of the bank;

(2) the resolutions of the board approving the dissolution and liquidation of the bank; and

(3) the notice to the shareholders informing them of the meeting.

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. 50, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 9, eff. September 1, 2007.

Sec. 36.103. BANKING COMMISSIONER INVESTIGATION AND CONSENT. The banking commissioner shall review the documentation submitted under Section 36.102 and conduct any necessary investigation or examination. If the proceedings appear to have been properly conducted and the bond to be given by the liquidating agent or committee is adequate for its purposes, the banking commissioner shall consent to dissolution and direct the bank to publish notice of its pending dissolution.

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

Sec. 36.104. NOTICE OF PENDING DISSOLUTION. (a) A state bank initiating voluntary dissolution shall publish notice of its pending dissolution in a newspaper of general circulation in each community where its home office or a branch is located:

(1) at least once each week for eight consecutive weeks; or

(2) at other times specified by the banking commissioner or rules adopted under this subtitle.

(b) The notice must:

(1) be in the form and include the information required by the banking commissioner; and

(2) state that:

(A) the bank is liquidating;

(B) depositors and creditors must present their claims for payment on or before a specified date; and

(C) all safe deposit box holders and bailors of property left with the bank should remove their property on or before a specified date.

(c) The dates selected by the bank under Subsection (b) must:

(1) be approved by the banking commissioner; and

(2) allow:

(A) the affairs of the bank to be wound up as quickly as feasible; and

(B) creditors, depositors, and owners of property adequate time for presentation of claims, withdrawal of accounts, and redemption of property.

(d) The banking commissioner may adjust the dates under Subsection (b) with or without republication of notice if additional time appears needed for the activities to which the dates pertain.

(e) At the time of or promptly after publication of the notice, the bank shall mail to each of the bank's known depositors, creditors, safe deposit box holders, and bailors of property left with the bank, at the mailing address shown on the bank's records, an individual notice containing:

(1) the information required in a notice under Subsection (b); and

(2) specific information pertinent to the account or property of the addressee.

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

Sec. 36.105. SAFE DEPOSITS AND OTHER BAILMENTS. (a) A contract between the bank and a person for bailment, of deposit for hire, or for lease of a safe, vault, or box ceases on the date specified in the notice as the date for removal of property or a later date approved by the banking commissioner. A person who has paid rental or storage charges for a period extending beyond the date designated for removal of property has an unsecured claim against the bank for a refund of the unearned amount paid.

(b) If the property is not removed by the date the contract ceases, an officer of the bank shall inventory the property. In making the inventory the officer may open a safe, vault, or box, or any package, parcel, or receptacle, in the custody or possession of the bank. The inventory must be made in the presence of a notary public who is not an officer or employee of the bank and who is bonded in an amount and by sureties approved by the banking commissioner. The property shall be marked to identify, to the extent possible, its owner or the person who left it with the bank. After all property belonging to others that is in the bank's custody and control has been inventoried, a master list certified by the bank officer and the notary public shall be furnished to the banking commissioner. The master list shall be kept in a place and dealt with in a manner the banking commissioner specifies pending delivery of the property to its owner or to the comptroller as unclaimed property.

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

Sec. 36.106. OFFICES TO REMAIN OPEN. Unless the banking commissioner directs or consents otherwise, the home office and all branch offices of a state bank initiating voluntary dissolution shall remain open for business during normal business hours until the last date specified in published notices for presentation of claims, withdrawal of accounts, and redemption of property.

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

Sec. 36.107. FIDUCIARY ACTIVITIES. (a) As soon after publication of the notice of dissolution as is practicable, the bank shall:

(1) terminate all fiduciary positions it holds;

(2) surrender all property held by it as a fiduciary; and

(3) settle its fiduciary accounts.

(b) Unless all fiduciary accounts are settled and transferred by the last date specified in published notices or by the banking commissioner and unless the banking commissioner directs otherwise, the bank shall mail a notice to each trustor and beneficiary of any remaining trust, escrow arrangement, or other fiduciary relationship. The notice must state:

(1) the location of an office open during normal business hours where administration of the remaining fiduciary accounts will continue until settled or transferred; and

(2) a telephone number at that office.

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

Sec. 36.108. FINAL LIQUIDATION. (a) After the bank has taken all of the actions specified by Sections 36.102, 36.105, and 36.107, paid all its debts and obligations, and transferred all property for which a legal claimant has been found after the time for presentation of claims has expired, the bank shall make a list from its books of the names of each depositor, creditor, owner of personal property in the bank's possession or custody, or lessee of any safe, vault, or box, who has not claimed or has not received a deposit, debt, dividend, interest, balance, or other amount or property due to the person. The list must be sworn to or affirmed by a majority of the bank's board.

(b) The bank shall:

(1) file the list and any necessary identifying information with the banking commissioner;

(2) pay any unclaimed money and deliver any unclaimed property to the comptroller as provided by Chapter 74, Property Code; and

(3) certify to the banking commissioner that the unclaimed money has been paid and unclaimed property has been delivered to the comptroller.

(c) After the banking commissioner has reviewed the list and has reconciled the unclaimed cash and property with the amounts of money and property reported and transferred to the comptroller, the banking commissioner shall allow the bank to distribute the bank's remaining assets, if any, among its shareholders as their ownership interests appear.

(d) After distribution of all remaining assets under Subsection (c), the bank shall file with the department:

(1) an affidavit and schedules, sworn to or affirmed by a majority of the bank's board, showing the distribution to each shareholder;

(2) all copies of reports of examination of the bank in its possession; and

(3) its original charter or an affidavit stating that the original charter is lost.

(e) After verifying the submitted information and documents, the banking commissioner shall issue a certificate canceling the charter 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. 51, eff. September 1, 2007.

Sec. 36.109. APPLICATION OF LAW TO BANK IN DISSOLUTION. A state bank in the process of voluntary dissolution and liquidation remains subject to this subtitle and Chapters 11 and 12, including provisions for examination by the banking commissioner, and the bank shall furnish reports required by the banking commissioner.

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

Sec. 36.110. AUTHORIZATION OF DEVIATION FROM PROCEDURES. The banking commissioner may authorize a deviation from the procedures for voluntary dissolution in this subchapter if the banking commissioner determines that the interests of claimants are not jeopardized by the deviation.

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

Sec. 36.111. CLOSURE BY BANKING COMMISSIONER FOR INVOLUNTARY DISSOLUTION AND LIQUIDATION. The banking commissioner may close a state bank for involuntary dissolution and liquidation under this chapter if the banking commissioner determines that:

(1) the voluntary liquidation is:

(A) being conducted in an improper or illegal manner; or

(B) not in the best interests of the bank's depositors and creditors; or

(2) the bank is insolvent or imminently insolvent.

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

Sec. 36.112. APPLICATION FOR NEW CHARTER. After a state bank's charter has been voluntarily surrendered and canceled, the bank may not resume business or reopen except on application for and approval of a new charter.

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

SUBCHAPTER C. INVOLUNTARY DISSOLUTION AND LIQUIDATION

Sec. 36.201. ACTION TO CLOSE STATE BANK. (a) The banking commissioner may close and liquidate a state bank on finding that:

(1) the interests of the bank's depositors and creditors are jeopardized by the bank's insolvency or imminent insolvency; and

(2) the best interests of depositors and creditors would be served by requiring that the bank be closed and its assets liquidated.

(b) A majority of the bank's directors may voluntarily close the bank and place it with the banking commissioner for liquidation.

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. 52, eff. September 1, 2007.

Sec. 36.202. NOTICE AND EFFECT OF CLOSURE; APPOINTMENT OF RECEIVER. (a) After closing a state bank under Section 36.201, the banking commissioner shall place a sign at its main entrance stating that the bank has been closed and the findings on which the closing of the bank is based. A correspondent bank of the closed bank may not pay an item drawn on the account of the closed bank that is presented for payment after the correspondent has received actual notice of closing unless it previously certified the item for payment.

(b) As soon as practicable after posting the sign at the bank's main entrance, the banking commissioner shall tender the bank to the Federal Deposit Insurance Corporation as provided by Section 36.003 or initiate a receivership proceeding by filing a copy of the notice contained on the sign in a district court in the county where the bank's home office is located. The court in which the notice is filed shall docket it as a case styled, "In re liquidation of ____" (inserting the name of the bank). When this notice is filed, the court has constructive custody of all the bank's assets and any action that seeks to directly or indirectly affect bank assets is considered an intervention in the receivership proceeding and is subject to this subchapter and Subchapter D.

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

Sec. 36.203. NATURE AND DURATION OF RECEIVERSHIP. (a) The court may not require a bond from the banking commissioner as receiver.

(b) A reference in this chapter to the receiver is a reference to the banking commissioner as receiver and to any successor in office, the Federal Deposit Insurance Corporation if acting as receiver as provided by Section 36.003 and federal law, or an independent receiver appointed at the request of the banking commissioner as provided by Section 36.004.

(c) The receiver has all the powers of the directors, officers, and shareholders of the bank as necessary to support an action taken on behalf of the bank.

(d) The receiver and all employees and agents acting on behalf of the receiver are acting in an official capacity and are protected by Section 12.106. An act of the receiver is an act of the bank in

liquidation. This state or a political subdivision of this state is not liable and may not be held accountable for any debt or obligation of a state bank in receivership.

(e) Section 64.072, Civil Practice and Remedies Code, applies to the receivership of a bank except as provided by this subsection. A bank receivership shall be administered continuously for the length of time necessary to complete its purposes, and a period prescribed by other law limiting the time for the administration of a receivership or of corporate affairs generally, including Section 64.072(d), Civil Practice and Remedies Code, does not apply.

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. 53, eff. September 1, 2007.

Sec. 36.204. CONTEST OF LIQUIDATION. (a) A state bank, acting through a majority of its directors, may intervene in an action filed by the banking commissioner closing a state bank to challenge the banking commissioner's closing of the bank and to enjoin the banking commissioner or other receiver from liquidating its assets. The bank must file the intervention not later than the second business day after the closing of the bank, excluding legal holidays. The court may issue an ex parte order restraining the receiver from liquidating bank assets pending a hearing on the injunction. The receiver shall comply with the restraining order but may petition the court for permission to liquidate an asset as necessary to prevent its loss or diminution pending the outcome of the injunction.

(b) The court shall hear an action as quickly as possible and shall give it priority over other business.

(c) The bank or receiver may appeal the court's judgment as in other civil cases, except that the receiver shall retain all bank assets pending a final appellate court order even if the banking commissioner does not prevail in the trial court. If the banking commissioner prevails in the trial court, liquidation of the bank may proceed unless the trial court or appellate court orders otherwise. If liquidation is enjoined or stayed pending appeal, the trial court retains jurisdiction to permit liquidation of an asset as necessary to prevent its loss or diminution pending the outcome of the appeal.

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. 54, eff. September 1, 2007.

Sec. 36.205. NOTICE OF BANK CLOSING. (a) As soon as reasonably practicable after initiation of the receivership proceeding, the receiver shall publish notice in a newspaper of general circulation in each community where the bank's home office or a branch is located. The notice must state that:

(1) the bank has been closed for liquidation;

(2) depositors and creditors must present their claims for payment on or before a specified date; and

(3) all safe deposit box holders and bailors of property left with the bank should remove their property not later than a specified date.

(b) A date that the receiver selects under Subsection (a):

(1) may not be earlier than the 121st day after the date of the notice; and

(2) must allow:

(A) the affairs of the bank to be wound up as quickly as feasible; and

(B) creditors, depositors, and owners of property adequate time for presentation of claims, withdrawal of accounts, and redemption of property.

(c) The receiver may adjust the dates under Subsection (a) with the approval of the court and with or without republication of notice if additional time appears needed for those activities.

(d) As soon as reasonably practicable given the state of bank records and the adequacy of staffing, the receiver shall mail to each of the bank's known depositors, creditors, safe deposit box holders, and bailors of property left with the bank, at the mailing address shown on the bank's records, an individual notice containing the information required in a notice under Subsection (a) and specific information pertinent to the account or property of the addressee.

(e) The receiver may determine the form and content of notices under this section.

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

Sec. 36.206. INVENTORY. As soon as reasonably practicable given the state of bank records and the adequacy of staffing, the receiver shall prepare a comprehensive inventory of the bank's assets for filing with the court. The inventory is open to inspection.

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

Sec. 36.207. RECEIVER'S TITLE AND PRIORITY. (a) The receiver has the title to all the bank's property, contracts, and rights of action, wherever located, beginning on the date the bank is closed for liquidation.

(b) The rights of the receiver have priority over a contractual lien or statutory landlord's lien under Chapter 54, Property Code, judgment lien, attachment lien, or voluntary lien that arises after the date of the closing of the bank for liquidation.

(c) The filing or recording of a receivership order in a record office of this state gives the same notice that would be given by a deed, bill of sale, or other evidence of title filed or recorded by the bank in liquidation. The recording clerk shall index a recorded receivership order in the records to which the order relates.

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

Sec. 36.208. RIGHTS FIXED. The rights and liabilities of the bank in liquidation and of a depositor, creditor, officer, director, employee, shareholder, agent, or other person interested in the bank's estate are fixed on the date of closing of the bank for liquidation except as otherwise directed by the court or as expressly provided otherwise by this subchapter or Subchapter D.

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. 55, eff. September 1, 2007.

Sec. 36.209. DEPOSITORIES. (a) The receiver may deposit money

collected on behalf of the bank estate in:

(1) the Texas Treasury Safekeeping Trust Company in accordance with procedures established by the comptroller; or

(2) one or more state banks in this state, the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor, if the receiver, using sound financial judgment, determines that it would be advantageous to do so.

(b) If receivership money deposited in an account at a state bank exceeds the maximum insured amount, the receiver shall require the excess deposit to be adequately secured through a pledge of securities or otherwise, without approval of the court. The depository bank may secure the deposits of the bank in liquidation on behalf of the receiver, notwithstanding any other provision of Chapter 11 or 12 or this subtitle.

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

Sec. 36.210. PENDING LAWSUIT. (a) A judgment or order of a court of this state or of another jurisdiction in an action pending by or against the bank, rendered after the date the bank was closed for liquidation, is not binding on the receiver unless the receiver was made a party to the suit.

(b) Before the first anniversary of the date the bank was closed for liquidation, the receiver may not be required to plead to any suit pending against the bank in a court in this state on the date the bank was closed for liquidation and in which the receiver is a proper plaintiff or defendant.

(c) Sections 64.052, 64.053, and 64.056, Civil Practice and Remedies Code, do not apply to a bank estate being administered under this subchapter and Subchapter D.

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

Sec. 36.211. NEW LAWSUIT. (a) Except as otherwise provided by this section, the court in which the receivership proceeding is pending under this subchapter has exclusive jurisdiction to hear and determine all actions or proceedings instituted by or against the bank or receiver after the receivership proceeding begins.

(b) The receiver may file in any jurisdiction an ancillary suit

that may be helpful to obtain jurisdiction or venue over a person or property.

(c) Exclusive venue lies in Travis County for an action or proceeding instituted against the receiver or the receiver's employee, including an employee of the department, that asserts personal liability on the part of the receiver or employee.

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

Sec. 36.212. REQUIRING RECORD OR OTHER PROPERTY IN POSSESSION OF OTHER PERSON. (a) Each bank affiliate, officer, director, shareholder, trustee, agent, servant, employee, attorney, attorney-in-fact, or correspondent shall immediately deliver to the receiver, without cost to the receiver, any record or other property of the bank or that relates to the business of the bank.

(b) If by contract or otherwise a record or other property that can be copied is the property of a person listed in Subsection (a), it shall be copied and the copy shall be delivered to the receiver. The owner shall retain the original until notification by the receiver that it is no longer required in the administration of the bank's estate or until another time the court, after notice and hearing, directs. A copy is considered to be a record of the bank in liquidation under Section 36.225.

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. 56, eff. September 1, 2007.

Sec. 36.213. INJUNCTION IN AID OF LIQUIDATION. (a) On application by the receiver, the court with or without notice may issue an injunction:

(1) restraining a bank officer, director, shareholder, trustee, agent, servant, employee, attorney, attorney-in-fact, correspondent, or other person from transacting the bank's business or wasting or disposing of its property; or

(2) requiring the delivery of the bank's property or assets to the receiver subject to the further order of the court.

(b) At any time during a proceeding under this subchapter, the

court may issue another injunction or order considered necessary or desirable to prevent:

(1) interference with the receiver or the proceeding;

(2) waste of the assets of the bank;

(3) the beginning or prosecution of an action;

(4) the obtaining of a preference, judgment, attachment, garnishment, or other lien; or

(5) the making of a levy against the bank or its assets.

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. 57, eff. September 1, 2007.

Sec. 36.214. SUBPOENA. (a) The receiver may request the court ex parte to issue a subpoena to compel the attendance and testimony of a witness before the receiver and the production of a record relating to the receivership estate. For this purpose the receiver or the receiver's designated representative may administer an oath or affirmation, examine a witness, or receive evidence. The court has statewide subpoena power and may compel attendance and production of a record before the receiver at the bank, the office of the receiver, or another location.

(b) A person served with a subpoena under this section may file a motion with the court for a protective order as provided by Rule 166b, Texas Rules of Civil Procedure. In a case of disobedience of a subpoena or the contumacy of a witness appearing before the receiver or the receiver's designated representative, the receiver may request and the court may issue an order requiring the person subpoenaed to obey the subpoena, give evidence, or produce a record relating to the matter in question.

(c) A witness who is required to appear before the receiver is entitled to receive:

(1) reimbursement for mileage, in the amount 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 set by the receiver with the approval of the court of not less than $10 a day and not

more than an amount equal to the per diem travel allowance of a state employee.

(d) A payment of fees under Subsection (c) is an administrative expense.

(e) The receiver may serve the subpoena or have it served by the receiver's authorized agent, a sheriff, or a constable. The sheriff's or constable's fee for serving a subpoena must be the same as the fee paid the sheriff or constable for similar services.

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

(g) On certification by the receiver under official seal, a record produced or testimony taken as provided by this section and held by the receiver is admissible in evidence in any case without proof of its correctness or other proof, except the certificate of the receiver that the record or testimony was received from the person producing the record or testifying. The certified record or a certified copy of the record is prima facie evidence of the facts it contains. This section does not limit another provision of this subchapter, Subchapter D, or another 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 2001, 77th Leg., ch. 1420, Sec. 6.103(c), eff. Sept. 1, 2001.

Sec. 36.215. EXECUTORY CONTRACT; ORAL AGREEMENT. (a) Not later than six months after the date the receivership proceeding begins, the receiver may terminate any executory contract to which the bank is a party or any obligation of the bank as a lessee. A lessor who receives notice of the receiver's election to terminate the lease before the 60th day before the termination date is not entitled to rent or damages for termination, other than rent accrued to the date of termination.

(b) An agreement that tends to diminish or defeat the interest of the estate in a bank asset is not valid against the receiver unless the agreement:

(1) is in writing;

(2) was executed by the bank and any person claiming an adverse interest under the agreement, including the obligor, when the bank acquired the asset;

(3) was approved by the board of the bank or its loan committee, and the approval is reflected in the minutes of the board or committee; and

(4) has been continuously since its execution an official record of the bank.

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

Sec. 36.216. PREFERENCES. (a) A transfer of or lien on the property or assets of a state bank is voidable by the receiver if the transfer or lien:

(1) was made or created less than:

(A) four months before the date the bank is closed for liquidation; or

(B) one year before the date the bank is closed for liquidation if the receiving creditor was at the time an affiliate, officer, director, or principal shareholder of the bank or an affiliate of the bank;

(2) was made or created with the intent of giving to a creditor or depositor, or enabling a creditor or depositor to obtain, a greater percentage of the claimant's debt than is given or obtained by another claimant of the same class; and

(3) is accepted by a creditor or depositor having reasonable cause to believe that a preference will occur.

(b) Each bank officer, director, shareholder, trustee, agent, servant, employee, attorney-in-fact, or correspondent, or other person acting on behalf of the bank, who has participated in implementing a voidable transfer or lien, and each person receiving property or the benefit of property of the bank as a result of the voidable transfer or lien, are personally liable for the property or benefit received and shall account to the receiver for the benefit of the depositors and creditors of the bank.

(c) The receiver may avoid a transfer of or lien on the property or assets of a bank that a depositor, creditor, or shareholder of the bank could have avoided and may recover the property transferred or its value from the person to whom it was transferred or from a person who has received it unless the transferee or recipient was a bona fide holder for value before the date the bank was closed for liquidation.

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. 58, eff. September 1, 2007.

Sec. 36.217. EMPLOYEES OF RECEIVER. The receiver may employ agents, legal counsel, accountants, appraisers, consultants, and other personnel the receiver considers necessary to assist in the performance of the receiver's duties. The receiver may use personnel of the department if the receiver considers the use to be advantageous or desirable. The expense of employing those persons is an administrative expense.

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

Sec. 36.218. DISPOSAL OF PROPERTY; SETTLING OF CLAIM. (a) In liquidating a bank, the receiver on order of the court entered with or without hearing may:

(1) sell all or part of the property of the bank;

(2) borrow money and pledge all or part of the assets of the bank to secure the debt created, except that the receiver may not be held personally liable to repay borrowed money;

(3) compromise or compound a doubtful or uncollectible debt or claim owed by or owing to the bank; and

(4) enter another agreement on behalf of the bank that the receiver considers necessary or proper to the management, conservation, or liquidation of its assets.

(b) If the amount of a debt or claim owed by or owing to the bank or the value of an item of property of the bank does not exceed $20,000, excluding interest, the receiver may compromise or compound the debt or claim or sell the property on terms the receiver considers to be in the best interests of the bank estate without obtaining the approval of the court.

(c) The receiver may with the approval of the court sell or offer or agree to sell an asset of the bank, other than a fiduciary asset, to a depositor or creditor of the bank. Payment may be in whole or part out of distributions payable to the purchasing depositor or creditor on account of an approved claim against the

bank's estate. On application by the receiver, the court may designate one or more representatives to act for certain depositors or creditors as a class in the purchase, holding, and management of assets purchased by the class under this section, and the receiver may with the approval of the court advance the expenses of the appointed representative against the security of the claims of the class.

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

Sec. 36.219. COURT ORDER; NOTICE AND HEARING. If the court requires notice and hearing before entering an order, the court shall set the time and place of the hearing and prescribe whether the notice is to be given by service on specific parties, by publication, or by a combination of those methods. The court may not enter an order requested by a person other than the receiver without notice to the receiver and an opportunity for the receiver to be heard.

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

Sec. 36.220. RECEIVER'S REPORT; EXPENSES. (a) The receiver shall file with the court:

(1) a quarterly report showing the operation, receipts, expenditures, and general condition of the bank in liquidation; and

(2) a final report regarding the liquidated bank showing all receipts and expenditures and giving a full explanation and a statement of the disposition of all assets of the bank.

(b) The receiver shall pay all administrative expenses out of money or other assets of the bank. Each quarter the receiver shall swear to and submit an itemized report of those expenses. The court shall approve the report unless an objection is filed before the 11th day after the date it is submitted. An objection may be made only by a party in interest and must specify each item objected to and the ground for the objection. The court shall set the objection for hearing and notify the parties of this action. The objecting party has the burden of proof to show that the item objected to is improper, unnecessary, or excessive.

(c) The court may prescribe whether the notice of the receiver's report is to be given by service on specific parties, by

publication, or by a combination of those methods.

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

Sec. 36.221. COURT-ORDERED AUDIT. The court may order an audit of the books and records of the receiver that relate to the receivership. A report of an audit ordered under this section shall be filed with the court. The receiver shall make the books and records relating to the receivership available to the auditor as required by the court order. The receiver shall pay the expenses of an audit ordered under this section as an administrative expense.

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

Sec. 36.222. SAFE DEPOSITS AND OTHER BAILMENTS. (a) A contract between the bank and another person for bailment, of deposit for hire, or for lease of a safe, vault, or box ceases on the date specified for removal of property in the notices that were published and mailed or a later date approved by the receiver or the court. A person who has paid rental or storage charges for a period extending beyond the date designated for removal of property has a claim against the bank estate for a refund of the unearned amount paid.

(b) If the property is not removed by the date the contract ceases, the receiver shall inventory the property. In making the inventory the receiver may open a safe, vault, or box, or any package, parcel, or receptacle, in the custody or possession of the receiver. The property shall be marked to identify, to the extent possible, its owner or the person who left it with the bank. After all property belonging to others that is in the receiver's custody and control has been inventoried, the receiver shall compile a master list that is divided for each office of the bank that received property that remains unclaimed. The receiver shall publish, in a newspaper of general circulation in each community in which the bank had an office that received property that remains unclaimed, the list and the names of the owners of the property as shown in the bank's records. The published notice must specify a procedure for claiming the property unless the court, on application of the receiver, approves an alternate procedure.

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

Sec. 36.223. FIDUCIARY ACTIVITIES. (a) As soon after beginning the receivership proceeding as is practicable, the receiver shall:

(1) terminate all fiduciary positions the bank holds;

(2) surrender all property held by the bank as a fiduciary; and

(3) settle the bank's fiduciary accounts.

(b) The receiver shall release all segregated and identifiable fiduciary property held by the bank to successor fiduciaries.

(c) With the approval of the court, the receiver may sell the administration of all or substantially all remaining fiduciary accounts to one or more successor fiduciaries on terms that appear to be in the best interests of the bank's estate and the persons interested in the fiduciary accounts.

(d) If commingled fiduciary money held by the bank as trustee is insufficient to satisfy all fiduciary claims to the commingled money, the receiver shall distribute commingled money pro rata to all fiduciary claimants of commingled money based on their proportionate interests after payment of administrative expenses related solely to the fiduciary claims. The fictional tracing rule does not apply. To the extent of any unsatisfied fiduciary claim to commingled money, a claimant to commingled trust money is entitled to the same priority as a depositor of the bank.

(e) Subject to Subsection (d), if the bank has lost fiduciary money or property through misappropriation or otherwise, a claimant to the missing fiduciary money or property is entitled to the same priority as a depositor of the bank.

(f) The receiver may require a fiduciary claimant to file a proof of claim if the records of the bank are insufficient to identify the claimant's interest.

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

Sec. 36.224. DISPOSITION AND MAINTENANCE OF RECORDS. (a) On approval by the court, the receiver may dispose of records of the bank in liquidation that are obsolete and unnecessary to the

continued administration of the receivership proceeding.

(b) The receiver may devise a method for the effective, efficient, and economical maintenance of the records of the bank and of the receiver's office. The method may include maintaining those records on any medium approved by the records management division of the Texas State Library.

(c) To maintain the records of the liquidated bank after the closing of the receivership proceeding, the receiver may reserve assets of an estate, deposit them in an account, and use them for maintenance, storage, and disposal of records in closed receivership estates.

(d) Records of a liquidated bank are not government records for any purpose, including Chapter 552, Government Code, but shall be preserved and disposed of as if they were records of the department under Chapter 441, Government Code. Those records are confidential as provided by:

(1) Subchapter D, Chapter 31;

(2) Section 59.006; and

(3) rules adopted under this subtitle.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.103(d), eff. Sept. 1, 2001.

Sec. 36.225. RECORDS ADMITTED. (a) A record of a bank in liquidation obtained by the receiver and held in the course of the receivership proceeding or a certified copy of the record under the official seal of the receiver is admissible in evidence in all cases without proof of correctness or other proof, except the certificate of the receiver that the record was received from the custody of the bank or found among its effects.

(b) The receiver may certify the correctness of a record of the receiver's office, including a record described by Subsection (a), and may certify any fact contained in the record. The record shall be received in evidence in all cases in which the original would be evidence.

(c) The original record or a certified copy of the record is prima facie evidence of the facts it contains.

(d) A copy of an original record or another record that is maintained on a medium approved by the records management division of

the Texas State Library, within the scope of this section, and produced by the receiver or the receiver's authorized representative under this section:

(1) has the same effect as the original record; and

(2) may be used the same as the original record in a judicial or administrative proceeding in this state.

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

Sec. 36.226. RESUMPTION OF BUSINESS. (a) A state bank closed under Section 36.201 may not be reopened without the approval of the banking commissioner unless a contest of liquidation under Section 36.204 is finally resolved adversely to the banking commissioner and the court authorizes the bank's reopening.

(b) The banking commissioner may place temporary limits on the right of withdrawals by or payments to individual depositors and creditors of a bank reopened under this section. The limits:

(1) must apply equally to all unsecured depositors and creditors;

(2) may not defer a withdrawal by or payment to a secured depositor or creditor without the person's written consent; and

(3) may not postpone the right of full withdrawal or payment of unsecured depositors or creditors for more than 18 months after the date that the bank reopens.

(c) As a depositor or creditor of a reopened bank, this state or a political subdivision of this state may agree to temporary limits that the banking commissioner places on payments or withdrawals.

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

Sec. 36.227. ASSETS DISCOVERED AFTER CLOSE OF RECEIVERSHIP. (a) The banking commissioner shall report to the court discovery of an asset having value that:

(1) the banking commissioner discovers after the receivership was closed by final order of the court; and

(2) was abandoned as worthless or unknown during the receivership.

(b) The court may reopen the receivership proceeding for

continued liquidation if the value of the asset justifies the reopening.

(c) If the banking commissioner suspects that the information may have been intentionally or fraudulently concealed, the banking commissioner shall notify appropriate civil and criminal authorities to determine any applicable penalties.

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

SUBCHAPTER D. CLAIMS AGAINST RECEIVERSHIP ESTATE

Sec. 36.301. FILING CLAIM. (a) This section applies only to a claim by a person, other than a shareholder acting in that capacity, who has a claim against a state bank in liquidation, including a claimant with a secured claim and a claimant under a fiduciary relationship who has been ordered by the receiver to file a proof of claim under Section 36.223.

(b) To receive payment of a claim, the person must present proof of the claim to the receiver:

(1) at a place specified by the receiver; and

(2) within the period specified by the receiver under Section 36.205.

(c) A claim that is not filed within the period specified by the receiver may not participate in a distribution of the assets by the receiver, except that, subject to court approval, the receiver may accept a claim filed not later than the 180th day after the date notice of the claimant's right to file a proof of claim is mailed to the claimant.

(d) A claim accepted and approved under Subsection (c) is subordinate to an approved claim of a general creditor.

(e) Interest does not accrue on a claim after the date the bank is closed for liquidation.

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. 59, eff. September 1, 2007.

Sec. 36.302. PROOF OF CLAIM. (a) A proof of claim must be in writing, be signed by the claimant, and include:

(1) a statement of the claim;

(2) a description of the consideration for the claim;

(3) a statement of whether collateral is held or a security interest is asserted against the claim and, if so, a description of the collateral or security interest;

(4) a statement of any right of priority of payment for the claim or other specific right asserted by the claimant;

(5) a statement of whether a payment has been made on the claim and, if so, the amount and source of the payment, to the extent known by the claimant;

(6) a statement that the amount claimed is justly owed by the bank in liquidation to the claimant; and

(7) any other matter that is required by the court.

(b) The receiver may designate the form of the proof of claim. A proof of claim must be filed under oath unless the oath is waived by the receiver. A proof of claim filed with the receiver is considered filed in an official proceeding for purposes of Chapter 37, Penal Code.

(c) If a claim is founded on a written instrument, the original instrument, unless lost or destroyed, must be filed with the proof of claim. After the instrument is filed, the receiver may permit the claimant to substitute a copy of the instrument until the final disposition of the claim. If the instrument is lost or destroyed, a statement of that fact and of the circumstances of the loss or destruction must be filed under oath with the claim.

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

Sec. 36.303. JUDGMENT AS PROOF OF CLAIM. (a) A judgment entered against a state bank in liquidation before the date the bank was closed for liquidation may not be given higher priority than a claim of an unsecured creditor unless the judgment creditor in a proof of claim proves the allegations supporting the judgment to the receiver's satisfaction.

(b) A judgment against the bank taken by default or by collusion before the date the bank was closed for liquidation may not be considered as conclusive evidence of the liability of the bank to the judgment creditor or of the amount of damages to which the judgment creditor is entitled.

(c) A judgment against the bank entered after the date the bank was closed for liquidation may not be considered as evidence of liability or of the amount of damages.

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

Sec. 36.304. SECURED CLAIM. (a) The owner of a secured claim against a bank in liquidation may:

(1) surrender the security and file a claim as a general creditor; or

(2) apply the security to the claim and discharge the claim.

(b) If the owner applies the security and discharges the claim, any deficiency shall be treated as a claim against the general assets of the bank on the same basis as a claim of an unsecured creditor. The amount of the deficiency shall be determined as provided by Section 36.305, except that if the amount of the deficiency has been adjudicated by a court in a proceeding in which the receiver has had notice and an opportunity to be heard, the court's decision is conclusive as to the amount.

(c) The value of security held by a secured creditor shall be determined under supervision of the court by:

(1) converting the security into money according to the terms of the agreement under which the security was delivered to the creditor; or

(2) agreement, arbitration, compromise, or litigation between the creditor and the receiver.

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

Sec. 36.305. UNLIQUIDATED OR UNDETERMINED CLAIM. (a) A claim based on an unliquidated or undetermined demand shall be filed within the period provided by Subchapter C for the filing of a claim. The claim may not share in any distribution to claimants until the claim is definitely liquidated, determined, and allowed. After the claim is liquidated, determined, and allowed, the claim shares ratably with the claims of the same class in all subsequent distributions.

(b) For purposes of this section, a demand is considered unliquidated or undetermined if the right of action on the demand

accrued while the bank was closed for liquidation and the liability on the demand has not been determined or the amount of the demand has not been liquidated.

(c) If the receiver in all other respects is in a position to close the receivership proceeding, the proposed closing is sufficient grounds for the rejection of any remaining claim based on an unliquidated or undetermined demand. The receiver shall notify the claimant of the intention to close the proceeding. If the demand is not liquidated or determined before the 61st day after the date of the notice, the receiver may reject the claim.

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

Sec. 36.306. SET-OFF. (a) Mutual credits and mutual debts shall be set off and only the balance allowed or paid, except that a set-off may not be allowed in favor of a person if:

(1) the obligation of the bank to the person on the date the bank was closed for liquidation did not entitle the person to share as a claimant in the assets of the bank;

(2) the obligation of the bank to the person was purchased by or transferred to the person after the date the bank was closed for liquidation or for the purpose of increasing set-off rights; or

(3) the obligation of the person or the bank is as a trustee or fiduciary.

(b) On request, the receiver shall provide a person with an accounting statement identifying each debt that is due and payable. A person who owes the bank an amount that is due and payable against which the person asserts a set-off of mutual credits that may become due and payable from the bank in the future shall promptly pay to the receiver the amount due and payable. The receiver shall promptly refund, to the extent of the person's prior payment, mutual credits that become due and payable to the person by the bank in liquidation.

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

Sec. 36.307. ACTION ON CLAIM. (a) Not later than six months after the last day permitted for the filing of claims or a later date allowed by the court, the receiver shall accept or reject in whole or in part each filed claim against the bank in liquidation, except for

an unliquidated or undetermined claim governed by Section 36.305. The receiver shall reject a claim if the receiver doubts its validity.

(b) The receiver shall mail written notice to each claimant specifying the disposition of the person's claim. If a claim is rejected in whole or in part, the receiver in the notice shall specify the basis for rejection and advise the claimant of the procedures and deadline for appeal.

(c) The receiver shall send each claimant a summary schedule of approved and rejected claims by priority class and notify the claimant:

(1) that a copy of a schedule of claims disposition including only the name of the claimant, the amount of the claim allowed, and the amount of the claim rejected is available on request; and

(2) of the procedure and deadline for filing an objection to an approved claim.

(d) The receiver or an agent or employee of the receiver, including an employee of the department, is not liable, and a cause of action may not be brought against the person, for an action taken or not taken by the person relating to the adjustment, negotiation, or settlement of a claim.

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

Sec. 36.308. OBJECTION TO APPROVED CLAIM. The receiver with court approval shall set a date for objection to an approved claim. On or before that date a depositor, creditor, other claimant, or shareholder of the bank may file an objection to an approved claim. The objection shall be heard and determined by the court. If the objection is sustained, the court shall direct an appropriate modification of the schedule of claims.

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. 60, eff. September 1, 2007.

Sec. 36.309. APPEAL OF REJECTED CLAIM. (a) The receiver's

rejection of a claim may be appealed in the court in which the receivership proceeding is pending. The appeal must be brought within three months after the date of service of notice of the rejection.

(b) If the action is timely brought, review is de novo as if originally filed in the court and subject to the rules of procedure and appeal applicable to civil cases. This action is separate from the receivership proceeding and is not initiated by a claimant's attempt to appeal the action of the receiver by intervening in the receivership proceeding.

(c) If the action is not timely brought, the action of the receiver is final and not subject to review.

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

Sec. 36.310. PAYMENT OF CLAIM. (a) Except as expressly provided otherwise by this subchapter or Subchapter C, without the approval of the court the receiver may not make a payment on a claim, other than a claim for an obligation incurred by the receiver for administrative expenses.

(b) The receiver may periodically make partial distribution to the holders of approved claims if:

(1) all objections have been heard and decided as provided by Section 36.308;

(2) the time for filing appeals has expired as provided by Section 36.309; and

(3) a proper reserve is established for the pro rata payment of:

(A) rejected claims that have been appealed; and

(B) any claims based on unliquidated or undetermined demands governed by Section 36.305.

(c) As soon as practicable after the determination of all objections, appeals, and claims based on previously unliquidated or undetermined demands governed by Section 36.305, the receiver shall distribute the assets of the bank in satisfaction of approved claims other than claims asserted in a person's capacity as a shareholder.

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. 61, eff.

September 1, 2007.

Sec. 36.311. PRIORITY OF CLAIMS AGAINST INSURED BANK. The distribution of assets from the estate of a bank the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor shall be made in the same order of priority as assets would be distributed on liquidation or purchase of assets and assumption of liabilities of a national bank under federal law.

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

Sec. 36.312. PRIORITY OF CLAIMS AGAINST UNINSURED BANK. (a) The priority of distribution of assets from the estate of a bank the deposits of which are not insured by the Federal Deposit Insurance Corporation or its successor shall be in accordance with the order of each class as provided by this section. Every claim in each class shall be paid in full, or adequate money shall be retained for that payment, before a member of the next class receives any payment. A subclass may not be established within a class, except for a preference or subordination within a class expressly created by contract or other instrument or in the certificate of formation.

(b) Assets shall be distributed in the following order of priority:

(1) administrative expenses;

(2) approved claims of secured creditors to the extent of the value of the security as provided by Section 36.304;

(3) approved claims of beneficiaries of insufficient commingled fiduciary money or missing fiduciary property and approved claims of depositors of the bank;

(4) other approved claims of general creditors not falling within a higher priority under this section, including unsecured claims for taxes and debts due the federal government or a state or local government;

(5) approved claims of a type described by Subdivisions (1)-(4) that were not filed within the period prescribed by this subchapter; and

(6) claims of capital note or debenture holders or holders of similar obligations and proprietary claims of shareholders or

other owners according to the terms established by issue, class, or series.

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. 62, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 14, eff. June 14, 2013.

Sec. 36.313. EXCESS ASSETS. (a) If bank assets remain after the receiver has provided for unclaimed distributions and all of the liabilities of the bank in liquidation, the receiver shall distribute the remaining assets to the shareholders of the bank.

(b) If the remaining assets are not liquid or if they otherwise require continuing administration, the receiver may call a meeting of the shareholders of the bank. The receiver shall give notice of the meeting:

(1) in a newspaper of general circulation in the county where the home office of the bank was located; and

(2) by written notice to the shareholders of record at their last known addresses.

(c) At the meeting, the shareholders shall appoint one or more agents to take over the affairs to continue the liquidation for the benefit of the shareholders. Voting privileges are governed by the bank's bylaws and certificate of formation. If a quorum cannot be obtained at the meeting, the banking commissioner shall appoint an agent. An agent appointed under this subsection shall execute and file with the court a bond approved by the court, conditioned on the faithful performance of all the duties of the trust.

(d) Under order of the court the receiver shall transfer and deliver to the agent or agents for continued liquidation under the court's supervision all assets of the bank remaining in the receiver's hands. The court shall discharge the receiver from further liability to the bank and its depositors, creditors, and shareholders.

(e) The bank may not resume business and the charter of the bank is void on the date the court issues the order directing the receiver to transfer and deliver the remaining assets of the bank to

the agent or agents.

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. 63, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 15, eff. June 14, 2013.

Sec. 36.314. UNCLAIMED PROPERTY. After completion of the liquidation, any unclaimed property remaining in the hands of the receiver shall be tendered to the comptroller as provided by Chapter 74, Property Code.

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

CHAPTER 37. EMERGENCIES

Sec. 37.001. DEFINITION. In this chapter, "emergency" means a condition or occurrence that may interfere physically with the conduct of normal business at the offices of a bank or with the conduct of a particular bank operation, or that poses an imminent or existing threat to the safety or security of persons or property, including:

(1) fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;

(2) labor dispute or strike;

(3) power failure, transportation failure, or interruption of communication facilities;

(4) shortage of fuel, housing, food, transportation, or labor;

(5) robbery, burglary, or attempted robbery or burglary;

(6) epidemic or other catastrophe; or

(7) riot, civil commotion, enemy attack, or other actual or threatened act of lawlessness or violence.

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

Sec. 37.002. EMERGENCY CLOSING OF OFFICE OR OPERATION BY BANK.

(a) If the officers of a bank located in this state determine that an emergency that affects or may affect the bank's offices or a particular bank operation exists or is impending, the officers may determine:

(1) not to open the bank's offices or conduct the particular bank operation; or

(2) if the bank's offices have opened or the particular bank operation has begun, to close the bank's offices or suspend and close the particular bank operation during the emergency, regardless of whether the banking commissioner has issued a proclamation of emergency.

(b) Subject to Subsection (c), the office or operation closed may remain closed until the officers determine that the emergency has ended and for additional time reasonably required to reopen.

(c) An office or operation may not remain closed for more than three consecutive days, excluding days on which the bank is customarily closed, without the banking commissioner's approval.

(d) A bank closing an office or operation under this section shall give notice of its action to the banking commissioner as promptly as possible and by any means available.

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

Sec. 37.003. EMERGENCY CLOSING OF OFFICE OR OPERATION BY BANKING COMMISSIONER. (a) If the banking commissioner determines that an emergency exists or is impending in all or part of this state, the banking commissioner by proclamation may authorize banks located in the affected area to close all or part of their offices or operations.

(b) If the banking commissioner determines that an emergency exists or is impending that affects or may affect one or more particular banks or a particular bank operation, but not banks located in the area generally, the banking commissioner may authorize the bank or banks affected to close their offices or a particular bank operation.

(c) A bank office or bank operation closed under this section may remain closed until the banking commissioner proclaims that the emergency has ended, or until an earlier time that the officers of the bank determine that the closed bank office or bank operation

should reopen, except that the affected bank office or operation may remain closed for additional time reasonably required to reopen.

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

Sec. 37.004. EFFECT OF CLOSING. (a) A day on which a bank or one or more of its operations is closed during its normal banking hours as provided by this chapter is a legal holiday for all purposes with respect to any banking business affected by the closed bank or bank operation.

(b) A bank or a director, officer, or employee of a bank does not incur liability or loss of rights because of a closing authorized by this chapter.

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. 64, eff. September 1, 2007.

Sec. 37.005. LIMITATIONS ON WITHDRAWALS FROM STATE BANK. (a) At the request of a state bank that is experiencing or threatened with unusual and excessive withdrawals because of financial conditions, panic, or crisis, the banking commissioner, to prevent unnecessary loss to or preference among the depositors and creditors of the bank and to preserve the financial structure of the bank and its usefulness to the community, may issue an order limiting the right of withdrawal by or payment to depositors, creditors, and other persons to whom the bank is liable.

(b) The order:

(1) must expire not later than the 10th day after the date it is issued;

(2) must be uniform in application to each class of liability; and

(3) is not subject to judicial review.

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

Sec. 37.006. FINANCIAL MORATORIUM. (a) The banking

commissioner, with the approval of a majority of the finance commission and the governor, may proclaim a financial moratorium for, and invoke a uniform limitation on, withdrawal of deposits of every character from all banks within this state. A bank refusing to comply with a written proclamation of the banking commissioner under this section, signed by a majority of the members of the finance commission and the governor:

(1) forfeits its charter if it is a state bank; or

(2) may not act as reserve agent for a state bank or as depository of state, county, municipal, or other public money if it is a national bank.

(b) On order of the banking commissioner after refusal of a national bank to comply with the proclamation, a depositor of public money with the bank:

(1) shall immediately withdraw the public money from the bank; and

(2) may not redeposit public money in the bank without the banking commissioner's prior written approval.

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

Sec. 37.007. TEMPORARY BRANCH OR OFFICE. (a) If the banking commissioner determines that an emergency has affected and will continue to affect one or more particular bank offices for an extended period, either as a result of the emergency or subsequent recovery operations, the banking commissioner may authorize the bank or banks affected to open temporary branch offices or other facilities required for bank operations for the purpose of prompt restoration of access by the public to banking services.

(b) A temporary bank office opened under the authority of Subsection (a) may remain open only for the period specified in the banking commissioner's order, except that the banking commissioner may extend the period the office may remain open on a finding that the conditions requiring the temporary office continue to exist. The bank may convert a temporary branch office to a permanent bank location only by obtaining the prior written approval of the banking commissioner under Section 32.203.

(c) If requested by the state bank regulatory agency of another state that is experiencing an emergency and is contiguous to this

state, the banking commissioner may authorize a bank or banks located in the state to open temporary offices in this state for the purpose of prompt restoration of banking services to the existing customers of the bank or banks, as the circumstances of such emergency may require. A temporary bank office opened under the authority of this subsection may remain open only for the period specified in the banking commissioner's order, except that the banking commissioner may extend the period the office may remain open on a finding that the conditions requiring the temporary office continue to exist. A bank may convert a temporary branch office to a permanent bank location if permitted by and subject to the conditions and requirements of Chapter 203.

Added by Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 12, eff. September 1, 2007.

Sec. 37.008. REGULATORY COORDINATION. (a) To ensure effective coordination among and between the department and other state and federal agencies and the banking industry, and to further rapid restoration of banking services after an emergency, the banking commissioner may:

(1) enter into cooperative, coordinating, or information-sharing agreements with other state or federal agencies or with or through organizations affiliated with or representing one or more state or federal agencies;

(2) enter into cooperative, coordinating, or information-sharing agreements with banks or banking trade associations or other organizations affiliated with or representing one or more banks; and

(3) issue interpretive statements or opinions to temporarily waive or suspend regulatory requirements that threaten to impede recovery and restoration of financial services.

(b) Disclosure of information by or to the banking commissioner under this section does not constitute a waiver of or otherwise affect or diminish an evidentiary privilege to which the information is otherwise subject, regardless of whether the disclosure is governed by a confidentiality agreement. Notwithstanding other law, a party to an agreement described by Subsection (a) may execute, honor, and comply with an agreement to maintain confidentiality and oppose disclosure of information obtained from the banking

commissioner, and shall treat as confidential any information obtained from the banking commissioner that is entitled to confidential treatment under applicable state or federal law.

(c) The banking commissioner shall coordinate and cooperate with and assist the office of the governor in the performance of duties under this chapter and other state or federal law as required by Section 421.071, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 12, eff. September 1, 2007.

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. 344, Sec. 2.016, eff. Sept. 1, 1999.

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, and Title 16, 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, and Title 16, 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.

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.

SUBTITLE B. SAVINGS AND LOAN ASSOCIATIONS
CHAPTER 61. GENERAL PROVISIONS

Sec. 61.001. SHORT TITLE. This subtitle may be cited as the Texas Savings and Loan Act.

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

Sec. 61.002. DEFINITIONS. In this subtitle:

(1) "Appropriate banking agency":

(A) means:

(i) with respect to a savings bank chartered by this state, the Department of Savings and Mortgage Lending;

(ii) with respect to a federal savings bank, the Office of the Comptroller of the Currency;

(iii) with respect to a savings and loan association chartered by this state, the Department of Savings and Mortgage Lending;

(iv) with respect to a federal savings and loan association, the Office of the Comptroller of the Currency;

(v) with respect to a bank chartered by this state, the Texas Department of Banking;

(vi) with respect to a national bank, the Office of the Comptroller of the Currency; and

(vii) with respect to a bank, savings bank, or savings and loan association chartered by another state, the chartering agency; and

(B) includes:

(i) in each case in which a state bank is a member

of the Federal Reserve System, the board of governors of the Federal Reserve System;

(ii) in each case where required by the Federal Deposit Insurance Act (12 U.S.C. Section 1811 et seq.), the Federal Deposit Insurance Corporation; and

(iii) any successor of a state or federal agency specified by this subdivision.

(1-a) "Association" means a savings and loan association subject to this subtitle.

(2) "Board" means the board of directors of an association.

(3) "Capital stock" means the units into which the proprietary interest in a capital stock association is divided.

(4) "Capital stock association" means an association authorized to issue capital stock.

(5) "Commissioner" means the savings and mortgage lending commissioner.

(6) "Company" means a corporation, partnership, trust, joint-stock company, association, unincorporated organization, or other similar entity or a combination of any of those entities acting together.

(7) "Domestic association" means a savings and loan association organized under the laws of this state.

(8) "Earnings on savings accounts" means interest contractually payable or dividends declared payable to holders of savings accounts in an association.

(9) "Federal association" means a savings and loan association incorporated under the Home Owners' Loan Act (12 U.S.C. Section 1461 et seq.).

(10) "Finance commission" means the Finance Commission of Texas.

(11) "Foreign association" means a savings and loan association:

(A) organized under the laws of:

(i) a state or territory of the United States other than this state; or

(ii) the United States; and

(B) the principal office of which is located outside this state.

(12) "Loss reserves" means the aggregate amount of the reserves allocated by an association solely to absorb losses.

(13) "Member" means, with respect to a mutual association, a person:

(A) holding a savings account with the mutual association;

(B) assuming or obligated on a loan in which the mutual association has an interest; or

(C) owning property that secures a loan in which the mutual association has an interest.

(14) "Mutual association" means an association not authorized to issue capital stock.

(15) "Savings account" means the amount of money an association owes an account holder as the result of the deposit of funds in the association.

(16) "Savings and loan association" means an association the primary purposes of which are to promote thrift and home financing and the principal activity of which is the lending of money secured by liens on homes and other improved real property.

(17) "Savings and loan holding company" means a company that directly or indirectly controls a savings and loan association or controls another company that directly or indirectly controls a savings and loan association.

(18) "Savings liability" means the aggregate amount of money shown by the books of the association to be owed to the association's account holders.

(19) "Shareholder" means the owner of capital stock.

(20) "Surplus" means the aggregate amount of:

(A) the undistributed earnings of an association held as undivided profits or unallocated reserves for general corporate purposes; and

(B) paid-in surplus held by the association.

(21) "Unsafe and unsound practice" means an action or inaction in the operation of an association that is likely to:

(A) cause insolvency or substantial dissipation of assets or earnings; or

(B) reduce the ability of the association to satisfy on time withdrawal requests of savings account holders.

(22) "Withdrawal value of a savings account" means the net amount of money that may be withdrawn by an account holder from a savings account.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.101(a), eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.026, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 2, eff. September 1, 2013.

Sec. 61.003. CONTROL; SUBSIDIARY. (a) For the purposes of this subtitle, a person controls an association if the person has the power to direct or cause the direction of the management and policies of the association directly or indirectly. A person is considered to control an association if the person, individually or acting with others, directly or indirectly holds with the power to vote, owns, or controls, or holds irrevocable proxies representing, at least 25 percent of the voting rights of the association.

(b) For the purposes of this subtitle, a company is a subsidiary of an association if the association or another company directly or indirectly controlled by the association controls the company. An association is considered to control a company if the association, directly or indirectly or acting with one or more other individuals or entities or through one or more subsidiaries:

(1) holds with the power to vote, owns, or controls, or holds proxies representing, more than 25 percent of the voting shares of the company;

(2) controls in any manner the election of a majority of the directors of the company;

(3) is a general partner in the company; or

(4) has contributed more than 25 percent of the equity capital of the company.

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

Sec. 61.004. NOTICE OF HEARING; RIGHT TO RESPOND. (a) Notice of a hearing under this subtitle shall be given to each association and federal association in the county in which the subject matter of the hearing is or will be located, except that notice of a hearing held under an order under Chapter 66 shall be given to each party

affected by the order.

(b) Each interested party is entitled to an opportunity to respond and present evidence and argument on each issue involved in a hearing under this subtitle.

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

Sec. 61.005. RECORD OF PROCEEDING. On written request by an interested party, the commissioner shall keep a formal record of the proceedings of a hearing under this subtitle.

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

Sec. 61.006. DECISION OR ORDER. (a) A decision or order adverse to a party who has appeared and participated in a hearing must be in writing and include separately stated findings of fact and conclusions of law on the issues material to the decision or order. Findings of fact that are stated in statutory language must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) A decision or order entered after a hearing becomes final and appealable 15 days after the date it is entered unless a party files a motion for rehearing before that date. If the motion for rehearing is overruled, the decision or order becomes final and appealable on the date the order overruling the motion is entered.

(c) Each party to a hearing shall be promptly notified personally or by mail of a decision, order, or other action taken in respect to the subject matter of the hearing.

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

Sec. 61.007. FEES. The finance commission by rule shall:

(1) set the amount of fees the commissioner charges for:

(A) supervision and examination of associations;

(B) filing an application or other documents; and

(C) other services the commissioner performs; and

(2) specify the time and manner of payment of the fees.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 22, eff. Sept. 1, 2001.

CHAPTER 62. ORGANIZATIONAL AND FINANCIAL REQUIREMENTS

SUBCHAPTER A. INCORPORATION IN GENERAL

Sec. 62.001. APPLICATION TO INCORPORATE. (a) Five or more residents of this state may apply to incorporate an association by submitting to the commissioner an application and the filing fee.

(b) An application must contain:

(1) two copies of the association's articles of incorporation identifying:

(A) the name of the association;

(B) the location of the principal office; and

(C) the names and addresses of the initial directors;

(2) two copies of the association's bylaws;

(3) data sufficiently detailed and comprehensive to enable the commissioner to make a determination under Section 62.007, including statements, exhibits, and maps;

(4) other information relating to the association and its operation that the finance commission by rule requires; and

(5) financial information about each applicant, incorporator, director, or shareholder that the finance commission by rule requires.

(c) Financial information described by Subsection (b)(5) is confidential and not subject to public disclosure unless the commissioner finds that public disclosure is necessary.

(d) The articles of incorporation and statements of fact shall be signed and sworn to.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 23, eff. Sept. 1, 2001.

Sec. 62.002. ADDITIONAL INCORPORATION REQUIREMENTS FOR CAPITAL STOCK ASSOCIATION. (a) A capital stock association's articles of incorporation must include a statement of:

(1) the aggregate number of shares of common stock that the association may issue;

(2) the par value of each share or that the shares are

without par value;

(3) whether the association may issue preferred stock;

(4) the amount of stock that has been subscribed and will be paid for before the association begins business;

(5) the name and address of each subscriber and the amount subscribed by each; and

(6) the amount of paid-in surplus with which the association will begin business.

(b) Before approving the application of a capital stock association, the commissioner may require the association to have an aggregate amount of capital in the form of stock and paid-in surplus that the finance commission by rule specifies.

(c) The subscriptions for capital stock and paid-in surplus, less lawful expenditures, shall be returned pro rata to the subscribers if:

(1) the application is not approved; or

(2) the association does not begin business.

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

Sec. 62.003. ADDITIONAL INCORPORATION REQUIREMENTS FOR MUTUAL ASSOCIATION. (a) A mutual association's articles of incorporation must include a statement of the amount of savings liability of the association and the amount of the expense fund with which the association will begin business.

(b) Before approving the articles of incorporation of a mutual association, the commissioner may require the association to have subscriptions for an aggregate amount of savings accounts and an expense fund in an aggregate amount that the commissioner, under rules of the finance commission, finds is necessary for the successful operation of the association.

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

Sec. 62.004. APPROVAL OF MANAGING OFFICER. (a) An association may not begin business before:

(1) it presents to the commissioner the name and qualifications of its managing officer; and

(2) the commissioner approves the managing officer.

(b) An applicant is not required at a hearing on the application to specify in the public record the name or qualifications of the managing officer of the association.

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

Sec. 62.005. CORPORATE NAME. (a) The name of an association must include the words "Savings Association," "Savings Institution," "Savings and Loan Association," or "Savings and Loan Institution," preceded by one or more appropriate descriptive words approved by the commissioner.

(b) The commissioner may not approve the incorporation of an association that has the same name as another association authorized to do business in this state under this subtitle or a name so nearly resembling the name of another association as to be calculated to deceive unless the association is formed:

(1) by the reincorporation, reorganization, or consolidation of other associations; or

(2) on the sale of the property or franchise of an association.

(c) A person who is not an association authorized to do business under this subtitle may not do business under a name or title that:

(1) indicates or reasonably implies that the business being done is the type of business carried on or transacted by an association; or

(2) is calculated to lead a person to believe that the business being done is the type of business carried on or transacted by an association.

(d) On application by the commissioner or an association, a court may enjoin a violation of this section.

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

Sec. 62.006. HEARING ON APPLICATION TO INCORPORATE. (a) On the filing of a complete application to incorporate, the commissioner shall:

(1) issue public notice of the application; and

(2) give any interested person an opportunity to appear,

present evidence, and be heard for or against the application.

(b) A hearing officer designated by the commissioner shall preside over the hearing.

(c) The hearing officer shall file with the commissioner a report on the hearing. The report must:

(1) specify findings of fact on each condition described by Section 62.007(a); and

(2) identify the evidence that forms the basis for the findings.

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

Sec. 62.007. DECISION ON APPLICATION TO INCORPORATE; ISSUANCE OF CERTIFICATE OF INCORPORATION. (a) The commissioner may approve an application to incorporate only if the commissioner finds that:

(1) the prerequisites to incorporation required by this chapter are satisfied;

(2) the character, responsibility, and general fitness of each person named in the articles of incorporation command confidence and warrant belief that:

(A) the business of the association will be honestly and efficiently conducted in accordance with the intent and purpose of this subtitle; and

(B) the association will have qualified full-time management;

(3) there is a public need for the association;

(4) the volume of business in the community in which the association will conduct its business indicates a profitable operation is probable; and

(5) the operation of the association will not unduly harm an existing association.

(b) On finding that the requirements of Subsection (a) are fulfilled, the commissioner shall:

(1) enter an order approving the application and stating the findings required by Subsection (a);

(2) issue under official seal a certificate of incorporation;

(3) deliver a copy of the approved articles of incorporation and bylaws to the incorporators; and

(4) permanently retain a copy of the articles and bylaws.

(c) On delivery of the certificate of incorporation to the incorporators, the association:

(1) is a corporate body with perpetual existence unless terminated by law; and

(2) may exercise the powers of an association beginning on the date the commissioner certifies receipt of satisfactory proof that the association has received in cash and free of encumbrance:

(A) the required amount of the capital stock and paid-in surplus if the association is a capital stock association; or

(B) the required amount of the savings liability and expense fund if the association is a mutual association.

(d) On denial of an application, the commissioner shall enter an order denying the application and include a written statement specifying the grounds for the denial. The commissioner shall deliver by certified mail a copy of the order to the designated representative of the incorporators.

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

Sec. 62.008. PREFERENCE FOR LOCAL CONTROL. If an application to incorporate a new association that proposes to locate an office in a community is before the commissioner at the same time as an application to establish an additional office in the same community from an existing association and the principal office of the existing association is located in a county other than the county in which the community is located, the commissioner may give additional weight to the application of the applicant that has the greater degree of control vested in or held by residents of the community.

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

Sec. 62.009. DEADLINE FOR COMMENCING BUSINESS. (a) An association shall begin business not later than the first anniversary of the date the commissioner approves the association's application.

(b) On the request of the incorporators and for good cause shown, the commissioner may grant a reasonable extension of the deadline prescribed by Subsection (a).

(c) The commissioner may rescind the authority to operate of an

association that does not begin business as required by this subtitle.

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

Sec. 62.010. AMENDMENT OF ARTICLES OF INCORPORATION OR BYLAWS. (a) An association may amend its articles of incorporation or bylaws by a resolution adopted by a majority vote of those entitled to vote attending an annual meeting or a special meeting called for that purpose.

(b) An amendment may not take effect before it is filed with and approved by the commissioner.

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

Sec. 62.011. CHANGE OF OFFICE OR NAME. (a) Only with the prior approval of the commissioner may an association:

(1) establish an office other than the principal office stated in the association's articles of incorporation;

(2) move an office from its immediate vicinity; or

(3) change the association's name.

(b) On request, the commissioner shall give a person who may be affected by an act described by Subsection (a) an opportunity to be heard.

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

SUBCHAPTER B. INCORPORATION TO REORGANIZE OR MERGE

Sec. 62.051. PURPOSE OF INCORPORATION. A person may apply to incorporate an association for the purpose of:

(1) purchasing the assets, assuming the liabilities, excluding liability to stockholders, and continuing the business of an association the commissioner considers to be in an unsafe condition; or

(2) acquiring an existing association by merger.

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

Sec. 62.052. INCORPORATION REQUIREMENTS. (a) An application to incorporate an association under this subchapter must be submitted to the commissioner.

(b) The application must include information required by rule of the finance commission.

(c) The association must have capital in an amount set by the commissioner that is sufficient to carry out the purposes for which incorporation is requested.

(d) If the commissioner considers the association to be reorganized or merged to be in an unsafe condition:

(1) Chapter 2001, Government Code, does not apply to the application; and

(2) the application and all information relating to the application are confidential and not subject to public disclosure.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 24, eff. Sept. 1, 2001.

Sec. 62.053. DECISION ON APPLICATION; ISSUANCE OF CERTIFICATE OF INCORPORATION. (a) The commissioner shall approve an application under this subchapter if the commissioner finds that:

(1) the business of the association that is to be reorganized or merged can be effectively continued under the articles of incorporation; and

(2) the reorganization or merger is in the best interest of the general public and the savers, depositors, creditors, and shareholders of the association that is to be reorganized or merged.

(b) If the commissioner approves an application under Subsection (a), the commissioner shall:

(1) state findings under that subsection in writing; and

(2) issue under official seal a certificate of incorporation.

(c) Notwithstanding Section 62.354, the commissioner may approve an application to incorporate under this subchapter if the commissioner:

(1) considers the association that is to be reorganized or merged to be in an unsafe condition; and

(2) finds from the application and all information submitted with the application that the reorganization or merger is

in the best interest of the general public and the savers, depositors, creditors, and shareholders of the association that is to be reorganized or merged.

(d) On issuance of the certificate of incorporation, the association:

(1) is a corporate body and a continuation of the former association, subject to all its liabilities, obligations, duties, and relations; and

(2) may exercise the powers of an association.

(e) In a merger, a shareholder of a capital stock association has the same dissenter's rights as a shareholder of a domestic business corporation under the Texas Business Corporation Act.

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

SUBCHAPTER C. ADMINISTRATION

Sec. 62.101. ORGANIZATIONAL MEETING. (a) Not later than the 30th day after the date the corporate existence of an association begins, the initial board shall hold an organizational meeting and elect officers and take other appropriate action to begin the business of the association.

(b) The commissioner for good cause shown by order may extend the deadline prescribed by Subsection (a).

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

Sec. 62.102. BOARD OF DIRECTORS. (a) A board of not less than five or more than 21 directors shall direct the business of the association. The members or shareholders shall periodically set the number of directors by a resolution adopted at an annual meeting or a special meeting called for that purpose.

(b) The members or shareholders shall elect the board by a majority vote at each annual meeting.

(c) The bylaws of a capital stock association may require all or a majority of the board to be elected from among the holders of the capital stock.

(d) A vacancy on the board is filled by the election by a majority vote of the remaining directors, regardless of whether a quorum exists, of a director to serve until the next annual meeting

of the members or shareholders. The remaining directors may continue to direct the association until the vacancy is filled.

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

Sec. 62.104. OFFICERS. (a) The officers of an association are:

(1) a president;

(2) one or more vice presidents;

(3) a secretary; and

(4) other officers prescribed by the bylaws.

(b) The board shall elect the officers by a majority vote.

(c) The president must be a member of the board.

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

Sec. 62.105. INDEMNITY BONDS OF DIRECTORS, OFFICERS, AND EMPLOYEES. (a) An association shall maintain a blanket indemnity bond with an adequate corporate surety protecting the association from loss by or through dishonest or criminal action or omission, including fraud, theft, robbery, or burglary, by an officer or employee of the association or a director of the association when the director performs the duties of an officer or employee.

(b) An association that employs a collection agent who is not covered by the bond required by Subsection (a) shall provide for the bonding of the agent in an amount equal to at least twice the average monthly collection of the agent unless the agent is an institution insured by the Federal Deposit Insurance Corporation. An association shall require a collection agent to settle with the association at least monthly.

(c) The board and the commissioner must approve:

(1) the amount and form of the bond; and

(2) the sufficiency of the surety.

(d) The bond must provide that a cancellation by the surety or the insured is not effective until the earlier of:

(1) the date the commissioner approves for the cancellation; or

(2) the 31st day after the date written notice of the cancellation is given to the commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 3, eff. September 1, 2013.

Sec. 62.106. MEETINGS OF MEMBERS AND SHAREHOLDERS. (a) The annual meeting of the members or shareholders of an association shall be held at the time set by the bylaws of the association.

(b) A special meeting may be called as provided by the bylaws of the association.

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

Sec. 62.107. VOTING RIGHTS. (a) The bylaws of an association must specify the voting requirements, including quorum requirements, for conducting business at a meeting of the members or shareholders.

(b) A person is entitled to vote at an annual or special meeting of the association if the person:

(1) was a member or shareholder of record of the association on December 31 of the year preceding the date of the meeting or on the 20th business day preceding the date notice of the meeting was given, whichever is later; and

(2) has not ceased to be a member or shareholder of the association after the date described by Subdivision (1) and before the date of the meeting.

(c) The bylaws of an association must provide for the voting rights of the members or shareholders. The bylaws may provide for computing the number of votes that a member or shareholder is entitled to cast. The bylaws of a capital stock association may provide that only a shareholder is entitled to vote.

(d) Unless the bylaws of the association provide otherwise, on a question requiring action by the members or shareholders, each member or shareholder is entitled to cast:

(1) one vote because the person is a member or shareholder;

(2) one vote for each share or fraction of a share of the capital stock of the association the person owns; and

(3) one vote for each $100 or fraction of that amount of the withdrawal value of savings accounts the person holds.

(e) A loan or a savings account creates a single membership for voting purposes even if more than one person is obligated on the loan or has an interest in the savings account.

(f) Voting may be in person or by proxy. A proxy must be in writing, signed by the member or shareholder or the member's or shareholder's attorney-in-fact, and filed with the secretary of the association. Unless otherwise specified by the proxy, a proxy continues until:

(1) a written revocation is delivered to the secretary; or

(2) the proxy is superseded by a subsequent proxy.

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

SUBCHAPTER D. OPERATIONS AND FINANCES

Sec. 62.151. COMPUTATION OF INCOME; STATEMENT OF CONDITION. (a) An association shall close its books at the times provided by its bylaws to determine the amount of its gross income for the period since the date of the last closing of its books.

(b) An association's net income for a period is computed by subtracting the association's operating expenses for the period from the association's gross income for the period.

(c) An association shall:

(1) have prepared and published a statement of the association's condition as of December 31 of each year; and

(2) file a copy of the statement with the commissioner not later than January 15 of the year following the year for which the statement is prepared.

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

Sec. 62.152. MINIMUM NET WORTH REQUIREMENT. An association shall meet minimum net worth requirements prescribed by rule of the finance commission.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 25, eff. Sept. 1, 2001.

Sec. 62.153. INSURANCE OF SAVINGS ACCOUNTS. (a) An

association may obtain insurance for its savings accounts from the Federal Deposit Insurance Corporation.

(b) Only if the account is insured by the Federal Deposit Insurance Corporation may a person advertise, represent, or offer to accept a savings account in this state as:

(1) an insured or guaranteed account; or

(2) the savings account of an insured or guaranteed institution.

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

Sec. 62.154. LIMITATION ON ISSUANCE OF SECURITIES. An association may issue a form of stock, share, account, or investment certificate only as authorized by this subtitle.

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

Sec. 62.155. COMMON STOCK. (a) An association may not issue common stock before the common stock is fully paid for in cash.

(b) An association may not make a loan against the shares of its outstanding common stock.

(c) An association may not directly or indirectly purchase its own issued common stock.

(d) An association may not retire or redeem common stock until:

(1) all liabilities of the association are satisfied, including all amounts due to holders of savings accounts, unless:

(A) the savings accounts are insured by an agency of the United States or written permission is obtained from the commissioner; and

(B) the retirement or redemption is authorized by a majority vote of the association's stockholders at an annual meeting or a special meeting called for that purpose;

(2) the basis of the retirement or redemption is approved by the commissioner; and

(3) if an association's accounts are insured, the association files written consent from the insuring agency with the commissioner.

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

Sec. 62.156. PREFERRED STOCK. (a) An association may not issue preferred stock before the preferred stock is fully paid for in cash.

(b) An association may not make a loan against the shares of its outstanding preferred stock.

(c) An association may retire or redeem preferred stock in the manner provided by:

(1) the articles of incorporation; or

(2) a resolution of the board establishing the rights and preferences relating to the stock.

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

Sec. 62.157. SERIES AND CLASSES OF PREFERRED STOCK. (a) The articles of incorporation may:

(1) authorize that shares of preferred stock be divided into and issued in series; and

(2) determine the rights and preferences of each series or part of a series.

(b) Each series must be clearly designated to distinguish its shares from the shares of other series or classes.

(c) The articles of incorporation may authorize the board by resolution to divide classes of preferred stock into series and to determine the rights and preferences of the shares of each series. A copy of the resolution must be submitted to the commissioner before the shares may be issued. The commissioner shall file the resolution in the commissioner's office if the resolution conforms to this subtitle. After the resolution is filed, it is considered an amendment of the association's articles of incorporation.

(d) All shares of the same class of preferred stock must be identical except for the following rights and preferences:

(1) the rate of dividend;

(2) the terms, including price and conditions, under which shares may be redeemed;

(3) the amount payable for shares on involuntary liquidation;

(4) the amount payable for shares on voluntary liquidation;

(5) a sinking fund provision for the redemption or purchase of shares;

(6) the terms, including conditions, of conversion of shares that may be converted; and

(7) voting rights.

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

Sec. 62.158. DIVIDENDS ON CAPITAL STOCK. The board of a capital stock association may declare and pay a dividend out of current or retained income, in cash or additional stock, to the holders of record of the stock outstanding on the date the dividend is declared.

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

Sec. 62.159. USE OF SURPLUS ACCOUNTS AND EXPENSE FUND CONTRIBUTIONS. (a) At an association's closing date, the association may use all or part of a surplus account, whether earned or paid-in, or expense fund contributions on its books to:

(1) meet expenses of operating the association for the period just closed;

(2) make required transfers to loss reserves; or

(3) pay or credit dividends declared on savings accounts.

(b) Paid-in surplus may be used instead of earnings to pay organizational and operating expenses and dividends on savings accounts and to meet any loss reserve requirements.

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

Sec. 62.160. USE OF EXPENSE FUND CONTRIBUTIONS. (a) The expense of organizing the association, the association's operating expenses, and the dividends declared and paid or credited to the association's savings account holders may be paid out of the expense fund until the association's earnings are sufficient to pay those amounts.

(b) The amounts contributed to the expense fund are not a liability of the association except as provided by this subchapter.

(c) The association shall pay to the contributor dividends on the amount contributed. An amount contributed to the expense fund is considered a savings account of the association.

(d) Contributions to the expense fund may be repaid the contributors pro rata from the net earnings of the association after provision for required loss reserve allocations and payment or credit of dividends declared on savings accounts.

(e) If the association is liquidated before contributions to the expense fund are repaid, contributions to the expense fund that remain unspent after the payment of expenses of liquidation, creditors, and the withdrawal value of savings accounts shall be repaid the contributors pro rata.

(f) The association's books must reflect the expense fund.

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

SUBCHAPTER E. CONVERSION TO FEDERAL ASSOCIATION

Sec. 62.201. CONDITIONS FOR CONVERSION. (a) The finance commission by rule shall establish the conditions under which an association may convert to a federal association under Section 5, Home Owners' Loan Act (12 U.S.C. Section 1464), and its subsequent amendments.

(b) The conditions must ensure that the conversion will not cause undue harm to the public interest or another existing association.

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

Sec. 62.202. APPLICATION TO CONVERT. (a) An association may convert to a federal association if a resolution favoring the conversion is adopted by a majority vote of the members or shareholders of the association who are entitled to vote at an annual meeting or a special meeting called to consider the conversion.

(b) The application to convert must:

(1) be filed in the office of the commissioner not later than the 10th day after the date of the meeting; and

(2) include a copy of the minutes of the meeting, sworn to by the secretary or an assistant secretary.

(c) The copy of the minutes filed under Subsection (b) is

presumptive evidence that the meeting was held and the resolution was adopted.

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

Sec. 62.203. REVIEW BY COMMISSIONER; APPROVAL. Not later than the 10th day after the date an application to convert is received, the commissioner shall:

(1) consent in writing to the conversion; or

(2) set a hearing on whether the conversion complies with rules adopted under Section 62.201.

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

Sec. 62.204. HEARING ON APPLICATION. (a) A hearing set under Section 62.203(2) shall be held not later than the 25th day after the date the application is filed unless a later date is agreed to by the applicant and the commissioner.

(b) The commissioner or a hearing officer designated by the commissioner shall conduct the hearing.

(c) The hearing shall be conducted as a contested case as provided by Chapter 2001, Government Code, except that:

(1) a proposal for decision may not be made; and

(2) the commissioner shall render a final decision or order not later than the 15th day after the date the hearing is closed.

(d) The provisions of Chapter 2001, Government Code, relating to motion for rehearing and judicial review are available to the applicant if the commissioner refuses to approve the conversion.

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

Sec. 62.205. CONSUMMATION OF CONVERSION. Within three months after the date the commissioner consents to the conversion of an association, the association shall take the action necessary under federal law to convert the association to a federal association.

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

Sec. 62.206. FILING OF CHARTER OR CERTIFICATE. (a) The converted association shall file with the commissioner:

(1) a copy of the charter issued to the federal association by the Office of the Comptroller of the Currency; or

(2) a certificate showing the organization of the association as a federal association, certified by the secretary or assistant secretary of the Office of the Comptroller of the Currency.

(b) Failure to file a required instrument with the commissioner does not affect the validity of the conversion.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 4, eff. September 1, 2013.

Sec. 62.207. EFFECT OF ISSUANCE OF CHARTER. On the issuance of a charter by the Office of the Comptroller of the Currency, the association:

(1) ceases to be an association incorporated under this subtitle; and

(2) is no longer subject to the supervision and control of the commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 5, eff. September 1, 2013.

Sec. 62.208. CONTINUATION OF CORPORATE EXISTENCE. After an association is converted to a federal association:

(1) the corporate existence of the association continues; and

(2) the federal association is considered to be a continuation of the association that was converted.

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

Sec. 62.209. PROPERTY AND OBLIGATIONS OF CONVERTED ASSOCIATION.

(a) The property of an association converted to a federal association immediately by operation of law vests in the federal association.

(b) The federal association:

(1) holds the property in its own right to the extent it was held by the association that was converted; and

(2) succeeds to the obligations and relations of the association that was converted on the date the conversion takes effect.

(c) A pending judicial proceeding to which the association that was converted is a party is not abated or discontinued by reason of the conversion and may be prosecuted to final judgment, order, or decree as if the conversion had not occurred.

(d) The federal association may continue a judicial proceeding in its own corporate name. A judgment, order, or decree that might have been rendered for or against the association that was converted may be rendered for or against the federal association.

(e) In this section, "property" includes the right, title, and interest in and to property, including things in action, and each right, privilege, interest, and asset that exists or inures.

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

SUBCHAPTER F. CONVERSION OF FEDERAL ASSOCIATION OR STATE OR NATIONAL BANK TO STATE ASSOCIATION

Sec. 62.251. APPLICATION TO CONVERT. (a) A federal association or state or national bank may convert to an association if the conversion is approved by a majority vote of the members or shareholders of the federal association or state or national bank cast at an annual meeting or a special meeting called to consider the conversion.

(b) The application to convert must:

(1) be filed in the office of the commissioner and with the appropriate banking agency not later than the 10th day after the date of the meeting; and

(2) include a copy of the minutes of the meeting, sworn to by the secretary or an assistant secretary.

(c) The copy of the minutes filed under Subsection (b) is presumptive evidence that the meeting was held and the conversion was

approved.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 6, eff. September 1, 2013.

Sec. 62.252. ELECTION OF DIRECTORS; EXECUTION AND ACKNOWLEDGMENT OF APPLICATION AND BYLAWS. (a) At the meeting under Section 62.251(a), the members or shareholders shall elect the directors of the association.

(b) The directors shall execute two copies of the application required by Section 62.251.

(c) Each director of the association shall sign and acknowledge the application as a subscriber and the proposed bylaws as an incorporator.

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

Sec. 62.253. REVIEW BY COMMISSIONER; APPROVAL. (a) On receipt of an application, the commissioner shall order an examination of the entity to be converted.

(b) If the commissioner finds the entity is in sound condition, the commissioner shall:

(1) approve the conversion; and

(2) insert in the certificate of incorporation, at the end of the paragraph preceding the testimonium clause, the statement "This association is incorporated by conversion from _____ (a federal savings and loan association, state bank, or national bank, as applicable)."

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

Sec. 62.254. APPLICABILITY OF SUBTITLE TO CONVERTED ASSOCIATION. (a) To the extent applicable, this subtitle applies to an association incorporated under this subchapter.

(b) An association incorporated under this subchapter:

(1) is a continuation of the entity that was converted;

and

(2) has the property and rights of that entity.

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

SUBCHAPTER G. CONVERSION OF ASSOCIATION TO STATE OR NATIONAL BANK OR STATE OR FEDERAL SAVINGS BANK

Sec. 62.301. APPLICATION TO CONVERT TO STATE SAVINGS BANK. An association may apply to the commissioner to convert to a state savings bank by filing an application with the commissioner. The application shall be processed under Subtitle C.

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

Sec. 62.302. APPLICATION TO CONVERT TO STATE OR NATIONAL BANK OR STATE OR FEDERAL SAVINGS BANK. (a) An association may convert to a state or national bank or state or federal savings bank if a resolution favoring the conversion is adopted by a majority vote of the members or shareholders of the association who are entitled to vote at an annual meeting or a special meeting called to consider the conversion.

(b) The application to convert must:

(1) be filed in the office of the commissioner not later than the 10th day after the date of the meeting; and

(2) include a copy of the minutes of the meeting, sworn to by the secretary or an assistant secretary.

(c) The copy of the minutes filed under Subsection (b) is presumptive evidence that the meeting was held and the resolution was adopted.

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

Sec. 62.303. REVIEW BY COMMISSIONER; APPROVAL. (a) The commissioner shall approve the application if the commissioner determines that the association is in good standing.

(b) For purposes of Subsection (a), an association is in good standing if the association has paid all fees, assessments, and money due and payable to the Department of Savings and Mortgage Lending.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.027, eff. September 1, 2007.

Sec. 62.304. FILING OF CHARTER OR CERTIFICATE. (a) The bank or savings bank shall file with the commissioner:

(1) a copy of the charter issued to the bank or savings bank by the appropriate financial institution regulatory agency; or

(2) a certificate showing the organization of the bank or savings bank as a financial institution, certified by the secretary or assistant secretary of the appropriate financial institution regulatory agency.

(b) Failure to file the charter or certificate with the commissioner does not affect the validity of the conversion.

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

Sec. 62.305. EFFECT OF APPROVAL OF APPLICATION AND ISSUANCE OF CHARTER. On the commissioner's approval of the application for conversion and the appropriate financial institution regulatory agency's issuance of a charter, the bank or savings bank:

(1) ceases to be an association incorporated under this subtitle; and

(2) is no longer subject to the supervision and control of the commissioner.

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

Sec. 62.306. CONTINUATION OF CORPORATE EXISTENCE. After an association is converted to a bank or savings bank:

(1) the corporate existence of the association continues; and

(2) the bank or savings bank is considered to be a continuation of the association that was converted.

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

Sec. 62.307. PROPERTY AND OBLIGATIONS OF CONVERTED ASSOCIATION. (a) The property of an association converted to a bank or savings bank immediately by operation of law vests in the bank or savings bank.

(b) The bank or savings bank:

(1) holds the property in its own right to the extent it was held by the association that was converted; and

(2) succeeds to the obligations and relations of the association that was converted on the date the conversion takes effect.

(c) A pending judicial proceeding to which the association that was converted is a party is not abated or discontinued by reason of the conversion and may be prosecuted to final judgment, order, or decree as if the conversion had not occurred.

(d) The bank or savings bank may continue a pending action in its own corporate name. A judgment, order, or decree that might have been rendered for or against the association that was converted may be rendered for or against the bank or savings bank.

(e) In this section, "property" has the meaning assigned by Section 62.259(e).

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

SUBCHAPTER H. REORGANIZATION, MERGER, AND CONSOLIDATION

Sec. 62.351. AUTHORITY TO REORGANIZE, MERGE, OR CONSOLIDATE. (a) An association may reorganize, merge, or consolidate with another association, federal association, foreign association, state or national bank, or state or federal savings bank under a plan adopted by the board.

(b) The plan must be approved:

(1) at an annual meeting or a special meeting called to consider the action by a majority of the total vote the members or shareholders are entitled to cast; and

(2) by the commissioner.

(c) A shareholder of a capital stock association has the same dissenter's rights as a shareholder of a domestic corporation under the Texas Business Corporation Act.

(d) A merger or consolidation of a domestic association with a foreign association is also subject to Subchapter I.

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

Sec. 62.352. CONTINUATION OF CORPORATE EXISTENCE; HOME OFFICE OF SURVIVING ENTITY. (a) An entity that results from a reorganization, merger, or consolidation as provided by Section 62.351 has the same incidents as the reorganized, merged, or consolidated entity in the same manner as an entity that has converted under this chapter has the same incidents as the converting entity.

(b) The home office of the association in the proposed merger that possesses the largest assets is the home office of the surviving entity unless the commissioner approves otherwise.

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

Sec. 62.353. NOTICE AND HEARING; CONFIDENTIALITY. (a) On presentation of a plan of reorganization, merger, or consolidation, the commissioner shall give:

(1) public notice of the reorganization, merger, or consolidation in each county in which an association participating in the plan has an office; and

(2) any interested person an opportunity to appear, present evidence, and be heard for or against the plan.

(b) A hearing officer designated by the commissioner shall preside over the hearing.

(c) If a protest is not received on or before the date of the hearing, the commissioner or hearing officer may waive the hearing.

(d) Except as provided by Subsection (e), the provisions of Chapter 2001, Government Code, applicable to a contested case apply to the hearing.

(e) If the commissioner designates a merger as a supervisory merger under rules adopted by the finance commission:

(1) the notice and hearing provisions of Chapter 2001, Government Code, and of this section do not apply to the application; and

(2) the application and all information relating to the application are confidential and not subject to public disclosure.

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

Sec. 62.354. DENIAL BY COMMISSIONER OF PLAN. The commissioner shall issue an order denying the plan if the commissioner finds that:

(1) the reorganization, merger, or consolidation would substantially lessen competition or restrain trade, and result in a monopoly or further a combination or conspiracy to monopolize or attempt to monopolize the savings and loan industry in any part of the state, unless the anticompetitive effects of the reorganization, merger, or consolidation are clearly outweighed in the public interest by the probable effect of the reorganization, merger, or consolidation in meeting the convenience and needs of the community to be served;

(2) in a merger or consolidation, the financial condition of either entity would jeopardize the financial stability of an association that is a party to the plan;

(3) the plan is not in the best interest of an association that is a party to the plan;

(4) the experience, ability, standing, competence, trustworthiness, or integrity of the management of the entities proposing the plan is such that the reorganization, merger, or consolidation would not be in the best interest of the associations that are parties to the plan;

(5) after reorganization, merger, or consolidation, the surviving entity would not be solvent, have adequate capital structure, or be in compliance with the laws of this state;

(6) the entities proposing the plan have not furnished all of the information pertinent to the application that is reasonably requested by the commissioner; or

(7) the entities proposing the plan are not acting in good faith.

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

SUBCHAPTER I. ADDITIONAL PROVISIONS FOR MERGER OR CONSOLIDATION OF DOMESTIC AND FOREIGN ASSOCIATIONS

Sec. 62.401. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to the merger or consolidation of a domestic association with a foreign association.

(b) The requirements of and authority and duties provided by this subchapter are in addition to those provided by Subchapter H.

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

Sec. 62.402. ADOPTION OF MERGER OR CONSOLIDATION PLAN. The board of directors of the foreign association must adopt the merger or consolidation plan.

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

Sec. 62.403. NOTICE AND HEARING; CONFIDENTIALITY. If the commissioner considers the domestic association to be in an unsafe condition:

(1) the notice and hearing provisions of Chapter 2001, Government Code, and of Section 62.353 do not apply to the application; and

(2) the application and all information related to the application are confidential and not subject to public disclosure.

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

Sec. 62.404. DENIAL BY COMMISSIONER OF APPLICATION. If the surviving association is a foreign association, the commissioner shall deny the application if:

(1) the laws of the state in which the foreign association has its principal place of business do not permit a savings and loan association of that state to merge or consolidate with a domestic association if the surviving association is a domestic association; or

(2) the foreign association is controlled by a savings and loan holding company that has its principal place of business in a state whose laws do not permit a savings and loan association of that state to merge or consolidate with a domestic association if the surviving association is a domestic association.

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

Sec. 62.405. APPROVAL BY COMMISSIONER OF PLAN. (a) If the commissioner approves the plan of merger or consolidation, the commissioner shall issue an order approving the merger or consolidation.

(b) If the surviving association is a foreign association, the commissioner shall issue and deliver to the surviving association a certificate of authority to do business as an association in this state for the period expiring on January 31 of the next calendar year.

(c) A surviving association that is a domestic association shall operate under:

(1) the articles and bylaws of the merging or consolidating domestic association; and

(2) the laws applicable to a domestic association.

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

Sec. 62.406. ENFORCEMENT OF CONDITION, RESTRICTION, OR REQUIREMENT ON SURVIVING FOREIGN ASSOCIATION. If the surviving association is a foreign association, the commissioner may enforce a condition, restriction, or requirement on the surviving association that could have been enforced by the state in which the foreign association has its principal place of business if the merger or consolidation had occurred in that state and the surviving association were a domestic association.

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

SUBCHAPTER J. MERGER OF SUBSIDIARY CORPORATION

Sec. 62.451. AUTHORITY TO MERGE. One or more corporations organized under a law of this state may merge into an association that owns all of the corporations' capital stock if:

(1) the board of directors of the association and each corporation by a majority vote adopt the plan of merger; and

(2) the secretary of state and the commissioner approve the merger.

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

Sec. 62.452. ARTICLES OF MERGER. (a) The articles of merger must:

(1) be executed by the president or vice president and a secretary or assistant secretary of the association and each corporation; and

(2) include:

(A) the name of the association and each corporation;

(B) a copy of the resolution of the association and each corporation adopting the plan of merger;

(C) a statement of the number of shares of each class issued or authorized by each corporation;

(D) a statement that all capital stock of each corporation is owned by the association; and

(E) a statement incorporating the provisions of Section 62.454(b).

(b) An original and a copy of the articles of merger shall be submitted to the secretary of state and the commissioner.

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

Sec. 62.453. APPROVAL OF MERGER. (a) The secretary of state shall approve the articles of merger if the secretary of state determines that:

(1) the articles of merger comply with applicable law; and

(2) all fees and franchise taxes due from each corporation have been paid.

(b) The commissioner shall approve the articles of merger if the commissioner determines that:

(1) the articles of merger comply with applicable law; and

(2) the merger is in the best interest of the association.

(c) On approval of the articles of merger, each approving officer shall:

(1) endorse on the original and copy of the articles of merger the word "filed" and the date of the approval;

(2) file the original articles of merger in the records of the officer's office; and

(3) issue and deliver to the association a certificate of merger with an attached copy of the articles of merger.

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

Sec. 62.454. EFFECT OF MERGER. (a) A merger takes effect on the date the last required certificate of merger is issued.

(b) After the merger takes effect:

(1) a corporation that was merged ceases to exist;

(2) the association assumes the rights and obligations of the corporation and owns the property of the association; and

(3) the association's articles of incorporation are considered amended to the extent that a change is stated in the plan of merger.

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

Sec. 62.455. INAPPLICABILITY OF SUBCHAPTER H. Subchapter H does not apply to a merger under this subchapter.

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

SUBCHAPTER K. VOLUNTARY LIQUIDATION

Sec. 62.501. RESOLUTION TO LIQUIDATE AND DISSOLVE; APPROVAL BY COMMISSIONER. (a) An association may liquidate and dissolve if:

(1) at an annual meeting or a special meeting called for that purpose, the members and shareholders by majority vote adopt a resolution to liquidate and dissolve; and

(2) a copy of the resolution certified to by the president and the secretary of the association and an itemized statement of the association's assets and liabilities sworn to by a majority of its board is filed with and approved by the commissioner.

(b) On the approval by the commissioner of the resolution:

(1) the association may not accept additional savings accounts or additions to savings accounts or make additional loans; and

(2) the association's income and receipts in excess of actual expenses of liquidation shall be applied to the discharge of its liabilities.

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

Sec. 62.502. DISTRIBUTION OF ASSETS. (a) The board, under the commissioner's supervision and in accordance with the approved liquidation plan, shall liquidate the affairs of the association and reduce the association's assets to cash for the purpose of paying, satisfying, and discharging all existing liabilities and obligations of the association, including the withdrawal value of all savings accounts.

(b) The board shall distribute any remaining balance pro rata among the savings account members of record on the date the association adopted the resolution to liquidate.

(c) The board of a capital stock association shall distribute any assets remaining after liabilities and obligations are fully paid and satisfied, including the withdrawal value of savings accounts, among the shareholders according to their liquidation rights.

(d) The board shall pay from the assets of the association all expenses incurred by the commissioner and the commissioner's representatives during the course of the liquidation.

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

Sec. 62.503. FINAL REPORT AND ACCOUNTING. (a) On completion of the liquidation, the board shall file with the commissioner a final report and accounting of the liquidation.

(b) The commissioner's approval of the report is a complete and final discharge of the board and each member in connection with the liquidation of the association.

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

SUBCHAPTER L. CHANGE OF CONTROL OF ASSOCIATION

Sec. 62.551. INAPPLICABILITY OF SUBCHAPTER. This subchapter does not apply to a conversion, reorganization, merger, consolidation, or voluntary liquidation under Subchapter E, F, G, H, J, or K.

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

Sec. 62.552. EFFECT OF SUBCHAPTER ON OTHER LAW. This

subchapter does not:

(1) excuse or diminish the notice requirements prescribed by this subtitle; or

(2) prevent the commissioner from investigating, commenting on, or seeking to enjoin or set aside a transfer of voting securities that the commissioner considers to be contrary to the public interest, regardless of whether the transfer is governed by this subchapter.

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

Sec. 62.553. APPLICATION FOR CHANGE OF CONTROL. (a) Control of an association may be changed only if an application for approval of the change is filed with and approved by the commissioner.

(b) The application must be:

(1) on a form prescribed by the commissioner;

(2) sworn to; and

(3) accompanied by the appropriate filing fee.

(c) Unless the commissioner expressly waives a requirement of this subsection, the application must contain:

(1) the identity, personal history, business background and experience, and financial condition of each person by whom or on whose behalf the acquisition is to be made, including a description of:

(A) the managerial resources and future prospects of each acquiring party; and

(B) any material pending legal or administrative proceedings to which the person is a party;

(2) the terms of any proposed acquisition and the manner in which the acquisition is to be made;

(3) the identity, source, and amount of the money or other consideration used or to be used in making the acquisition and, if any part of the money or other consideration has been or will be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and arrangements, agreements, or understandings with the parties;

(4) any plan or proposal of an acquiring party to liquidate the association, sell the association's assets, merge the association

with another company, or make other major changes in the association's business or corporate structure or management;

(5) the terms of any offer, invitation, agreement, or arrangement under which a voting security will be acquired and any contract affecting that security or its financing after it is acquired;

(6) information establishing that the requirements under Section 62.555(b) are satisfied; and

(7) other information:

(A) the finance commission by rule requires to be furnished in an application; or

(B) the commissioner orders to be included in a particular application.

(d) The commissioner may require each member of a group proposing to acquire voting securities under this subchapter to provide the information required by the commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 26, eff. Sept. 1, 2001.

Sec. 62.554. APPLICATION FILING FEE. (a) The finance commission by rule shall adopt a schedule of fees for filing applications and holding hearings. The schedule may be graduated so that an application or hearing that is more difficult to review or administer requires a larger fee.

(b) An application fee is not refundable if the application is denied. The commissioner may refund a portion of the fee if the application is withdrawn before the commissioner completes reviewing the application.

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

Sec. 62.555. DENIAL OF APPLICATION. (a) The commissioner by order shall deny an application unless the applicant establishes that:

(1) the acquisition would not:

(A) substantially lessen competition;

(B) restrain trade in a manner that would result in a monopoly; or

(C) further a combination or conspiracy to monopolize or attempt to monopolize the savings and loan industry in any part of this state;

(2) the financial condition of an acquiring party would not jeopardize the financial stability of the association being acquired;

(3) the plan or proposal to liquidate or sell the association or any assets is in the best interest of the association;

(4) the experience, ability, standing, competence, trustworthiness, and integrity of the applicant are sufficient to ensure that the acquisition is in the best interest of the association; and

(5) the association would be solvent, have adequate capital structure, and be in compliance with the laws of this state.

(b) The commissioner is not required to deny an application that fails to comply with Subsection (a)(1) if the commissioner determines that:

(1) the anticompetitive effects of the acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served; and

(2) the acquisition does not violate a law of this state or the United States.

(c) Notwithstanding Subsections (a) and (b), the commissioner shall issue an order denying an application if the commissioner determines that the applicant:

(1) has failed to furnish all of the information pertinent to the application reasonably requested by the commissioner; or

(2) is not acting in good faith.

(d) If the commissioner does not deny an application before the 61st day after the date the application is filed, the acquisition may be consummated. The acquisition may be consummated before the expiration of the 60-day period if the commissioner notifies the applicant in writing that the application will not be denied.

(e) An agreement entered into by the applicant and the commissioner as a condition that the application will not be denied is enforceable against the association and is considered an agreement under this subtitle.

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

Sec. 62.556. APPEAL TO COMMISSIONER OF DENIAL. (a) If the commissioner denies an application, the applicant is entitled to a hearing if the applicant submits a written request for a hearing not later than the later of:

(1) the 30th day after the date the application is filed; or

(2) the 15th day after the date the application is denied.

(b) Not later than the 30th day after the date the hearing is closed, the commissioner shall enter a final order affirming or withdrawing the denial of the application.

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

Sec. 62.557. JUDICIAL REVIEW. (a) An applicant may appeal the commissioner's denial of an application or the commissioner's order affirming the denial only after a final order is entered. The commissioner is defendant in the appeal.

(b) A party to the action may appeal the court's decision. The appeal is returnable to the appellate court at once and has precedence in that court over any cause of a different character pending in that court.

(c) The commissioner is not required to give an appeal bond in a cause arising under this subchapter.

(d) Filing an appeal under this section does not stay an order of the commissioner that is adverse to the applicant.

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

Sec. 62.558. UNAUTHORIZED CHANGE OF CONTROL. If it appears that a change in control may have taken place without approval, the commissioner may call a hearing to determine whether:

(1) a change in control has occurred without approval or an unauthorized person without any apparent ownership interest in the association, acting alone or with others, effectively has indirect controlling or dominating influence over the management or policies of the association; and

(2) if control or indirect controlling or dominating influence has been acquired as provided by Subdivision (1), an appropriate supervisory order should be issued, including an order

requiring a divestiture of that control or indirect controlling or dominating influence.

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

Sec. 62.559. CONFIDENTIALITY. (a) Except as provided by this section, information obtained by the commissioner under this subchapter is confidential and may not be disclosed by the commissioner or an officer or employee of the Department of Savings and Mortgage Lending.

(b) The commissioner may disclose the information to a department, agency, or instrumentality of this state or the United States if the commissioner considers disclosure to be necessary or proper to the enforcement of the laws of this state or the United States and in the best interest of the public.

(c) When the commissioner receives the application, the commissioner shall submit to the Texas Register notice of the application, its date of filing, and the identity of each party to the application. The information submitted shall be published in the Texas Register in the next issue following the date the information is received.

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

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.028, eff. September 1, 2007.

Sec. 62.560. INJUNCTION. (a) The attorney general on behalf of the commissioner may apply for equitable relief, including an order enjoining a violation, if the commissioner believes a person has violated or is about to violate this subchapter or a rule of the finance commission or order of the commissioner adopted under this subchapter.

(b) The suit must be brought in a district court of Travis County.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 27, eff. Sept. 1, 2001.

Sec. 62.561. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally makes a materially false or misleading statement to the commissioner with respect to the information required by this subchapter.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine in an amount not to exceed $2,000;

(2) confinement in county jail for a period not to exceed one year; or

(3) both the fine and confinement.

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

CHAPTER 63. GENERAL POWERS

Sec. 63.001. GENERAL CORPORATE POWERS. (a) An association has all the powers authorized by this subtitle and any other right, privilege, or power incidental to or reasonably necessary to accomplish the purposes of the association.

(b) With the commissioner's prior approval, an association may engage in business as a savings and loan association in any state of the United States to the extent permitted by the laws of that state, either directly or through the ownership of an association incorporated under the laws of another state.

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

Sec. 63.002. ENLARGEMENT OF POWERS. Notwithstanding any other provision of this subtitle, an association may:

(1) perform a function or engage in an activity, including making a loan or investment, to the same extent as a federal association;

(2) raise capital in the same manner and form as a federal association;

(3) issue a certificate in the same form as a federal association; or

(4) pay a dividend, earnings, or interest on a certificate in the same manner as a federal association.

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

Sec. 63.003. POWERS OF FEDERAL ASSOCIATION. A federal association and its members have all the powers, privileges, benefits, immunities, and exemptions provided by the law of this state for an association and the association's members.

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

Sec. 63.004. POWER TO BORROW. (a) An association may:

(1) borrow from any nongovernmental source an aggregate amount that does not exceed 25 percent of the amount of the association's savings liability on the date of borrowing; and

(2) pledge the association's assets to secure repayment of the borrowed money.

(b) Except as provided by Subsection (c), an association may borrow from a nongovernmental source an amount exceeding the amount described in Subsection (a)(1) only with the prior written approval of the commissioner.

(c) An association that is a member of a Federal Home Loan Bank may borrow or obtain an advance from that bank in an amount and on terms prescribed by that bank.

(d) An association at any time through action of its board may issue a capital note, debenture, or other capital obligation authorized by rules adopted under Section 11.302.

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

Sec. 63.005. FISCAL AGENT. (a) An association may act as fiscal agent of the United States. An association designated as fiscal agent of the United States by the secretary of the treasury shall act under regulations as required by the secretary and may act as fiscal agent for an instrumentality of the United States.

(b) An association may act as fiscal agent of this state or of a governmental subdivision or instrumentality of this state.

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

Sec. 63.006. POWER TO ACT UNDER CERTAIN FEDERAL RETIREMENT PLANS. An association or a federal association, to the extent that its charter and applicable federal regulations permit, may:

(1) exercise any power necessary to qualify as a trustee or custodian for:

(A) a retirement plan meeting the requirements of 26 U.S.C. Section 401(d) or 408; or

(B) a similar plan permitted or recognized by federal law; and

(2) invest money the association holds as trustee or custodian under Subdivision (1) in the association's savings accounts if the plan does not prohibit that investment.

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

Sec. 63.007. RIGHT TO ACT TO AVOID LOSS. This subtitle or another statute of this state does not deny an association the right to invest its money, operate a business, manage or deal in property, or take other action during any period that is reasonably necessary to avoid loss on a prior loan or investment or on an obligation created in good faith.

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

Sec. 63.008. CLOSING PLACE OF BUSINESS. An association or a federal savings and loan association operating in this state may close its place of business at any time its board determines.

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

Sec. 63.009. EMERGENCY CLOSING. (a) If the officers of an association determine that an emergency that affects or may affect the association's offices or operations exists or is impending, the officers, as reasonable, may determine:

(1) not to conduct the involved operations or open the offices on any business or banking day; or

(2) if the association is open, to close the offices or the involved operations for the duration of the emergency.

(b) Subject to Subsection (c), a closed office or operation under this section shall remain closed until the officers determine that the emergency has ended and for any additional time reasonably required to reopen.

(c) An association that closes an office or an operation under this section shall notify the commissioner of its action by any means available and as promptly as conditions permit. An office or operation may not be closed for more than 48 consecutive hours, excluding other legal holidays, without the commissioner's approval.

(d) In this section, "emergency" means a condition or occurrence that may interfere physically with the conduct of normal business at the offices of an association or with the conduct of a particular association operation or that poses an imminent or existing threat to the safety or security of persons, property, or both. The term includes a condition or occurrence arising from:

(1) fire, flood, earthquake, hurricane, tornado, wind, rain, or snowstorm;

(2) labor dispute and strike;

(3) power failure;

(4) transportation failure;

(5) interruption of communication facilities;

(6) shortage of fuel, housing, food, transportation, or labor;

(7) robbery, burglary, or attempted robbery or burglary;

(8) actual or threatened enemy attack;

(9) epidemic or other catastrophe;

(10) riot or civil commotion; or

(11) any other actual or threatened unlawful or violent act.

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

Sec. 63.010. EFFECT OF CLOSING. (a) A day on which an association or one or more of its operations is closed under Section 63.009 during all or part of its normal business hours is considered to be a legal holiday to the extent the association suspends operations.

(b) An association or a director, officer, or employee of the association does not incur liability or loss of rights from a closing

authorized by this subtitle.

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

CHAPTER 64. LOANS AND INVESTMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 64.001. ADOPTION OF RULES. (a) The finance commission shall adopt rules relating to the power of associations operating under this subtitle to make loans and investments.

(b) Rules adopted under this section must contain provisions reasonably necessary to ensure that:

(1) a loan made by an association is consistent with sound lending practices; and

(2) an investment made by an association promotes the purposes of this subtitle.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 28, eff. Sept. 1, 2001.

Sec. 64.002. CONTENT OF RULES. Rules adopted under this subchapter may include provisions governing:

(1) types of loans an association may originate, make, or sell;

(2) conditions under which an association may originate, make, or sell a loan;

(3) conditions under which an association may purchase or participate in a loan made by another lender;

(4) conditions for servicing a loan for another lender;

(5) conditions under which an association may lend money on the security of a loan made by another lender;

(6) conditions under which an association may pledge a loan held by the association as collateral for money borrowed by the association;

(7) conditions under which an association may invest in securities and debt instruments;

(8) documentation that an association must have in the association's loan files when the association funds, purchases, or participates in a loan;

(9) the form and content of statements of expenses, fees,

and other charges paid, or required to be paid, by a borrower;

(10) title information required to be maintained in force;

(11) insurance coverage required to be provided by a borrower for property that secures a loan;

(12) appraisal reports;

(13) financial statements of borrowers;

(14) fees or other compensation that may be paid to an officer, director, employee, affiliated person, consultant, or third party in connection with procuring a loan for an association;

(15) conditions under which an association may advance money to pay taxes, assessments, insurance premiums, and similar charges for the protection of the association's interest in property securing a loan;

(16) terms under which an association may acquire and deal in real property;

(17) valuation on an association's books of real property held by the association;

(18) terms governing an association's investment in a subsidiary corporation;

(19) powers that may be exercised by a subsidiary of an association; and

(20) any other matter necessary for proper administration of transactions conducted by an association.

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

Sec. 64.003. PROHIBITED TRANSACTIONS. An association may not engage in a transaction that violates a rule adopted under this subchapter.

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

SUBCHAPTER B. LOAN EXPENSES

Sec. 64.021. BORROWER PAYMENT OF LOAN EXPENSES. An association may require a borrower to pay all reasonable expenses incurred in connection with making, closing, disbursing, extending, readjusting, or renewing a loan.

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

Sec. 64.022. COLLECTION OF LOAN EXPENSES. An expense payment authorized by Section 64.021 may be:

(1) collected by the association from the borrower and:

(A) retained by the association; or

(B) paid to a person rendering a service for which a charge was made, including an officer, director, or employee of the association rendering the service; or

(2) paid directly by a borrower to the person rendering the service.

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

Sec. 64.023. CHARACTER OF LOAN EXPENSE PAYMENTS. An expense payment authorized by Section 64.021 is not interest or compensation charged by an association for the loan of money.

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

SUBCHAPTER C. LOAN PAYMENTS

Sec. 64.041. PENALTY FOR PREPAYMENT OR LATE PAYMENT. An association may charge a penalty for a prepayment of or late payment on a loan.

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

Sec. 64.042. APPLICATION OF PREPAYMENTS TO LOAN INSTALLMENTS. Unless otherwise agreed in writing, an association shall apply:

(1) a prepayment of principal to the final installment of the obligation until the final installment is fully paid; and

(2) additional prepayments on installments in the inverse order of their maturity.

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

SUBCHAPTER D. CHARGES RELATING TO REAL PROPERTY LOANS

Sec. 64.061. ADVANCES PAID BY ASSOCIATION. (a) An association may pay taxes, assessments, insurance premiums, and similar charges for the protection of the association's interest in property that secures a real property loan of the association.

(b) A payment under Subsection (a) is an advance, and the association may:

(1) carry the payment on the association's books as an asset of the association for which the association may charge interest; or

(2) add the payment to the unpaid balance of the loan to which it applies as of the first day of the month in which the payment is made.

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

Sec. 64.062. ADVANCES ARE LIEN ON PROPERTY. A payment under Section 64.061 is a lien against the real property that secures the loan for which it is made.

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

Sec. 64.063. PAYMENT OF ESTIMATED CHARGES BY BORROWER. (a) To enable the association to pay charges as they become due, an association may require a borrower to pay monthly in advance, in addition to interest or interest and principal, an amount equal to one-twelfth of the estimated annual taxes, assessments, insurance premiums, and other charges on the real property securing a loan.

(b) An association may increase or decrease the amount of the loan payment as necessary to meet the charges.

(c) An association may:

(1) carry payments in trust in an account; or

(2) credit the payments to the indebtedness and advance the money for charges as the charges become due.

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

Sec. 64.064. RECORD OF CHARGES. An association shall keep a record of the status of taxes, assessments, insurance premiums, and

other charges on real property securing the association's loans.

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

SUBCHAPTER E. INVESTMENT IN LOCAL SERVICE AREA

Sec. 64.081. REQUIRED INVESTMENTS. An association shall maintain in the association's portfolio not less than 15 percent of the association's deposits from its local service area designated under Section 64.082 in:

(1) first and second lien residential mortgage loans or foreclosed residential mortgage loans originated in the association's local service area;

(2) home improvement loans;

(3) interim residential construction loans;

(4) mortgage-backed securities secured by loans in the association's local service area; and

(5) loans for community reinvestment.

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

Sec. 64.082. DESIGNATION OF LOCAL SERVICE AREA. (a) The commissioner shall designate an association's local service area at the time of the association's incorporation.

(b) Unless the commissioner and the association otherwise agree, an association may rely on the designation of the local service area for the duration of corporate existence as an association.

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

Sec. 64.083. RULES. The finance commission shall adopt rules to implement this subchapter, including rules that define the categories of loans and investments described by Section 64.081.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 29, eff. Sept. 1, 2001.

Sec. 64.084. WAIVERS. The commissioner may grant a limited-term waiver from the requirements of Section 64.081 if quality loans in the categories described by that section are not available in an association's local service area.

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

SUBCHAPTER F. PROPERTY OF ASSOCIATION

Sec. 64.101. REAL PROPERTY ON WHICH ASSOCIATION FACILITY IS LOCATED. An association may own real property on which a facility used in connection with the operation of the association is located.

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

Sec. 64.102. DISPOSAL OF OTHER REAL PROPERTY. An association shall dispose of real property, other than real property described by Section 64.101, that is acquired by the association in the course of the association's business not later than the fifth anniversary of the date on which it is acquired unless the commissioner extends the time for disposal.

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

Sec. 64.103. TRANSACTIONS RELATING TO ASSOCIATION'S REAL PROPERTY. On authorization by the association's board of directors, an association may sell, convey, exchange for other real property, lease, improve, repair, or mortgage real property.

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

Sec. 64.104. RECORD OF CHARGES ON REAL AND PERSONAL PROPERTY. An association shall keep a record of the status of taxes, assessments, insurance premiums, and other charges on all real and personal property owned by the association.

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

CHAPTER 65. SAVINGS ACCOUNTS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 65.001. LIMITATIONS ON ACCOUNTS. The board of directors of an association may limit the number and value of savings accounts the association may accept.

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

Sec. 65.002. INVESTMENT IN ACCOUNTS. (a) Any person may be the holder of a savings account.

(b) An investment in a savings account may be made only in cash.

(c) A person may invest in a savings account in the person's own right or in a trust or other fiduciary capacity.

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

Sec. 65.003. SAVINGS CONTRACT. (a) Each holder of a savings account must execute a savings contract. The contract must specify:

(1) any special terms applicable to the account; and

(2) the conditions on which withdrawals may be made.

(b) The association shall hold a savings contract in the records pertaining to the account.

(c) A savings contract pertaining to a savings account of a public or governmental entity must provide that the holder of the account may not become a member of the association.

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

Sec. 65.004. EVIDENCE OF ACCOUNT. An association shall issue an account book or certificate to the holder of a savings account as evidence of the account.

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

Sec. 65.005. ACCOUNT OWNERSHIP. Unless an association has acknowledged in writing a pledge of a savings account, the

association may treat the holder of record of the account as the owner of the account for all purposes and is unaffected by notice to the contrary.

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

Sec. 65.006. TRANSFER OF ACCOUNT. (a) A savings account may be transferred only on the books of an association on presentation to the association of:

(1) evidence of transfer satisfactory to the association; and

(2) an application for transfer by the transferee.

(b) A transferee accepts an account subject to the terms of the:

(1) savings contract; and

(2) association's charter and bylaws.

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

Sec. 65.007. LOST OR DESTROYED ACCOUNT BOOK OR CERTIFICATE. (a) An association may issue a new account book or certificate in the name of the holder of record of a savings account if:

(1) the holder or the holder's legal representative requests; and

(2) proof is presented satisfactory to the association that the original book or certificate is lost or destroyed.

(b) A new account book or certificate must expressly state that:

(1) it is issued to replace a lost or destroyed account book or certificate; and

(2) the association may not be held liable on the original account book or certificate.

(c) An association may require indemnification against any loss resulting from issuing a new account book or certificate.

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

Sec. 65.008. ACCOUNT WITHDRAWALS. (a) A savings account

holder at any time may present a written order for withdrawal of all or part of the holder's account except to the extent the account is pledged to the association or to another person on the association's books.

(b) The association may:

(1) pay in full a withdrawal order as presented; and

(2) collect an early withdrawal penalty provided by the certificate or contract applicable to the account.

(c) With the approval of the Finance Commission of Texas and the governor, the commissioner may impose a uniform limitation on amounts withdrawable from savings accounts of associations if that limitation is necessary in the public interest.

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

Sec. 65.009. INTEREST OR DIVIDENDS PAID ON ACCOUNTS. (a) An association whose bylaws contain the provision authorized by Section 65.012 may contract to pay interest on savings accounts.

(b) An association whose bylaws do not contain the provision authorized by Section 65.012 may pay earnings on savings accounts in the form of dividends declared by the association's board.

(c) An association shall compute and pay interest and dividends according to rules of the finance commission.

(d) An association shall credit a dividend to a savings account on the association's books unless the account holder requests and the association has agreed that the association will pay dividends on the account in cash.

(e) An association may pay a cash dividend by check or bank draft.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 30, eff. Sept. 1, 2001.

Sec. 65.010. REDEMPTION OF SAVINGS ACCOUNT. (a) An association may redeem in the manner the board determines all or part of its savings accounts if the association:

(1) redeems the accounts on a dividend date;

(2) not later than the 31st day before the redemption date, gives notice of the redemption by certified mail to each affected

account holder at the holder's last address as recorded on the books of the association; and

(3) not later than the redemption date, sets aside the amount necessary for the redemption and keeps the amount available for redemption.

(b) The redemption price of a savings account is the withdrawal value of the account.

(c) All rights, including the accrual of earnings, that relate to a deposit account called for redemption, other than the right of the account holder of record to receive the redemption price, terminate as of the redemption date.

(d) An association may not redeem any of its savings accounts if the association:

(1) is subject to supervisory control, a conservatorship, or a receivership action under Chapter 66, unless the commissioner directs the redemption; or

(2) has applications for withdrawal that have been on file for more than 30 days and have not been paid.

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

Sec. 65.011. LIEN ON SAVINGS ACCOUNT. (a) Without further agreement or pledge, an association or a federal association doing business in this state has a lien on all savings accounts owned by a member to whom or on whose behalf the association has advanced money by loan or otherwise.

(b) On default in the payment or satisfaction of the member's obligation, the association, without notice to or consent of the member, may cancel on its books all or part of the member's savings account and apply that amount to payment of the obligation.

(c) The association by written instrument may waive its lien in whole or in part on a savings account.

(d) The association may take the pledge of a savings account of the association that is owned by a member other than the borrower as additional security for a:

(1) loan secured by an account;

(2) loan secured by an account and real property; or

(3) real property loan.

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

Sec. 65.012. PRIORITY OF ACCOUNTS; NOTICE OF WITHDRAWAL. (a) An association's bylaws may provide that on voluntary or involuntary liquidation, dissolution, or winding up of the association, or in any other situation in which the priority of savings accounts is in controversy, all savings accounts are, to the extent of their withdrawal value, debts of the association having the same priority as the claims of general creditors of the association not having priority, other than a priority resulting from consensual subordination, over claims of other general creditors of the association.

(b) An association's bylaws may require not more than 60 days' notice before the date a withdrawal application may be paid.

(c) An association that requires notice of withdrawal and does not pay a withdrawal application by the end of the notice period is considered to be subject to supervisory control, a conservatorship, or a receivership proceeding under Chapter 66.

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

Sec. 65.013. ACCOUNT AS LEGAL INVESTMENT. (a) Each of the following persons may invest money held by the person in a savings account of an association or a federal association:

(1) any fiduciary, including an administrator, executor, guardian, or trustee;

(2) a political subdivision or instrumentality of this state;

(3) an insurance company doing business in this state;

(4) a business or nonprofit corporation;

(5) a charitable or educational corporation or association; and

(6) a financial institution, including a bank or credit union.

(b) An investment by an insurance company in a savings account is eligible for tax reducing purposes under Chapter 221, Insurance Code.

(c) An investment by a school district in a savings account insured by the Federal Deposit Insurance Corporation is considered to

meet the requirements of Section 45.102, Education Code.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.109, eff. September 1, 2005.

SUBCHAPTER B. PROVISIONS APPLICABLE TO SPECIFIC TYPES OF ACCOUNTS

Sec. 65.101. ACCOUNT HELD BY MINOR. (a) An association or a federal savings and loan association doing business in this state may accept a savings account from a minor as the sole and absolute owner of the account.

(b) On the minor's order the association may:

(1) pay withdrawals;

(2) accept pledges to the association; and

(3) act in any other manner with respect to the account.

(c) Subject to Subsection (e), a payment or delivery of rights to a minor, or an acquittance signed by a minor who holds a savings account, is a discharge of the association for that payment or delivery.

(d) If the association requires a minor to furnish an acquittance or pledge or take other action with respect to the minor's savings account, that action is binding on the minor as if the minor had the capacity of an adult.

(e) If a parent or guardian of a minor informs the association in writing that the minor is not to have the authority to control the minor's savings account, the minor may not control the account during the minority without the joinder of the parent or guardian.

(f) If a minor dies, the acquittance of a parent or guardian of the minor discharges the association for amounts that in the aggregate do not exceed $1,000.

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

Sec. 65.102. ACCOUNT HELD BY MORE THAN ONE PERSON. (a) If a savings account is opened in an association or a federal savings and loan association doing business in this state in the names of more than one person, whether the persons are minors or adults, and the savings contract specifies that money in the account may be paid to

or on the order of any one of the account holders, the association may pay the money in the account to or on the order of any one of the account holders before or after the death of any of the other account holders. An association has no further liability for a payment made under this subsection.

(b) If a savings contract specifies that a check, receipt, or withdrawal order requires the signature of more than one of the account holders or of more than one of the surviving account holders after the death of an account holder, the association shall pay the money in the account according to the terms of the savings contract.

(c) If a savings account holder gives written notification to the association not to permit withdrawals according to the terms of the savings contract, the association may refuse, without liability, to honor any check, receipt, or withdrawal request on the account pending a determination of the rights of the account holders.

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

Sec. 65.103. JOINT TENANCY ACCOUNT HELD BY HUSBAND AND WIFE. (a) A husband and wife may enter into a savings contract that creates a joint tenancy with right of survivorship with respect to community property deposited in a savings account and any future additions or dividends made or credited to the account.

(b) An agreement under Subsection (a) must be in writing and subscribed to by the husband and wife but is not required to be acknowledged.

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

Sec. 65.104. PLEDGE OF JOINT ACCOUNT. (a) Unless the terms of the savings account provide otherwise, a person on whose signature money may be withdrawn from an account in the names of two or more persons may, by a signed pledge, pledge and transfer to the association or federal association all or part of the account.

(b) A pledge made under Subsection (a) does not sever or terminate the joint and survivorship ownership of the account.

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

Sec. 65.105. ACCOUNT HELD BY FIDUCIARY. (a) An association or a federal savings and loan association doing business in this state may accept a savings account in the name of a fiduciary, including an administrator, executor, custodian, guardian, or trustee, for one or more named beneficiaries.

(b) A fiduciary may:

(1) vote as a member as if the membership were held absolutely; and

(2) open, add to, or withdraw money from the account.

(c) Except as otherwise provided by law, a payment to a fiduciary or an acquittance signed by the fiduciary to whom a payment is made is a discharge of the association for the payment.

(d) After a person holding a savings account in a fiduciary capacity dies, the association may pay or deliver to the beneficiary the withdrawal value of the account, plus dividends on the account, or other rights relating to the account, in whole or in part, if the association has no written notice or order of the probate court of:

(1) the revocation or termination of the fiduciary relationship; or

(2) any other disposition of the beneficial estate.

(e) An association has no further liability for a payment made or right delivered under Subsection (d).

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

Sec. 65.106. TRUST ACCOUNT; UNDISCLOSED TRUST INSTRUMENT. (a) If an association opens a savings account for a person claiming to be the trustee for another and the association has no other written notice of the existence or terms of a trust:

(1) the person claiming to be the trustee may, on the person's signature, withdraw money from the account; and

(2) if that person dies, an association may pay the withdrawal value of all or part of the account, plus dividends on the account, to the person for whom the account was opened.

(b) An association has no further liability for a payment made under Subsection (a).

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

Sec. 65.107. POWER OF ATTORNEY ACCOUNT. (a) An association or a federal association doing business in this state may continue to recognize the authority of an attorney-in-fact authorized in writing to manage or withdraw money from a savings account of a member until the association receives written or actual notice of the revocation of that authority.

(b) For purposes of this section, written notice of the death or adjudication of incompetency of a member is considered to be written notice of revocation of the authority of the member's attorney-in-fact.

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

CHAPTER 66. ENFORCEMENT AND REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 66.001. GENERAL DUTIES. The Department of Savings and Mortgage Lending and the commissioner shall regulate associations and subsidiaries of associations operating under this subtitle.

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

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.029, eff. September 1, 2007.

Sec. 66.002. ADOPTION OF RULES. The finance commission may adopt rules relating to:

(1) the minimum amounts of capital stock and paid-in surplus required for incorporation as a capital stock association;

(2) the minimum amounts of savings liability and expense funds required for incorporation as a mutual association;

(3) the fees and procedures for processing, hearing, and deciding applications filed with the commissioner or the Department of Savings and Mortgage Lending under this subtitle;

(4) the books and records that an association is required to keep and the location at which the books and records are required to be maintained;

(5) the accounting principles and practices that an association is required to observe;

(6) the conditions under which records may be copied or

reproduced for permanent storage before the original records are destroyed;

(7) the form, contents, and time of publication of statements of condition;

(8) the form and contents of annual reports and other reports that an association is required to prepare and publish or file;

(9) the manner in which assets, liabilities, and transactions in general are to be described when entered in the books of an association, so that the entry accurately describes the subject matter of the entry; and

(10) the conditions under which the commissioner may require an asset to be charged off or reserves established by transfer from surplus or paid-in capital because of the depreciation of or overstated value of the asset.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 31, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.030, eff. September 1, 2007.

SUBCHAPTER B. EXAMINATIONS

Sec. 66.051. EXAMINATIONS. (a) The commissioner shall periodically examine the affairs of each association, including the subsidiaries and transactions of the association and the dealings of any savings and loan holding company that are related to the savings and loan subsidiaries of the association.

(b) An examination must include an audit if an independent audit is not available or is unsatisfactory to the commissioner.

(c) On completion of an audit, the auditor shall sign and certify the audit report. A copy shall be filed promptly with the commissioner.

(d) An examination under this section may be made in conjunction with an examination by the Federal Home Loan Bank Board, a Federal Home Loan Bank, or the Federal Deposit Insurance Corporation. The commissioner shall accept an audit made by or accepted by one of those agencies in an examination of an association.

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

Sec. 66.052. ADDITIONAL EXAMINATIONS. (a) The commissioner at the association's cost shall conduct an additional examination or audit or devote extraordinary attention to an association's affairs if the commissioner determines that the condition of the association makes it necessary or expedient to do so.

(b) A copy of the report of an examination or audit conducted under this section shall be furnished promptly to the association. The report shall be:

(1) presented to the board of the association at its next regular meeting or at a special meeting called for purposes of permitting the presentation of the report; and

(2) noted in the minutes of the meeting.

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

Sec. 66.053. ACCESS TO BOOKS AND RECORDS. The commissioner, a deputy commissioner, or an examiner or auditor of the commissioner shall be given free access to:

(1) the books and records of an association;

(2) the books and records of a subsidiary or savings and loan holding company of an association relating to the association's business; and

(3) the books and records kept by an officer, agent, or employee of the association, subsidiary, or savings and loan holding company relating to the association's business.

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

Sec. 66.054. SUBPOENA; ADMINISTRATION OF OATH OR AFFIRMATION. (a) In an examination conducted under this subchapter, the commissioner, the deputy commissioner, or an examiner or auditor of the commissioner may:

(1) subpoena witnesses;

(2) administer an oath or affirmation to a person, including a director, officer, agent, or employee of an association; or

(3) require and compel by subpoena the production of documents, including records, books, papers, and contracts.

(b) The commissioner may apply to a district court in Travis County for an order requiring a person to obey a subpoena or to appear or answer questions in connection with an examination.

(c) The court shall issue an order under Subsection (b) if the court finds good cause to issue the subpoena or to take testimony.

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

SUBCHAPTER C. SUPERVISORY INTERVENTION

Sec. 66.101. INTERVENTION FOR VIOLATIONS AND UNSAFE AND UNSOUND PRACTICES. The commissioner may intervene in the affairs of an association if the association or a person who participates in the affairs of the association or a subsidiary of the association:

(1) engages in or is about to engage in an unsafe and unsound practice in conducting the affairs of the association; or

(2) violates or is about to violate:

(A) the articles of incorporation or bylaws of the association;

(B) a law or supervisory order applicable to the association; or

(C) a condition that the commissioner or the finance commission has imposed on the association by written order or agreement.

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

Sec. 66.102. INTERVENTION FOR FILING INAPPROPRIATE INFORMATION. The commissioner may intervene in the affairs of an association if the association or a person who participates in the affairs of the association or a subsidiary of the association files materially false or misleading information in a filing required by Subchapter L, Chapter 62.

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

Sec. 66.103. INTERVENTION FOR ACTIVITY RESULTING IN ACTUAL OR

POTENTIAL LOSS. (a) The commissioner may intervene in the affairs of an association if a person who participates in the affairs of the association or a subsidiary or savings and loan holding company of the association commits or is about to commit:

(1) a fraudulent or criminal act in conducting the affairs that may cause the association or a subsidiary of the association to become or be in danger of becoming insolvent;

(2) an act that threatens immediate or irreparable harm to the public or the association, a subsidiary of the association, or the account holders or creditors of the association; or

(3) a breach of fiduciary duty that results in actual or probable substantial financial losses or other damages to the association or a subsidiary of the association or that would seriously prejudice the interest of savings account holders or holders of other security issued by the association.

(b) The commissioner may intervene in the affairs of an association if the association:

(1) is insolvent;

(2) is in imminent danger of insolvency; or

(3) makes or is about to make:

(A) a loan the value of the security for which is materially overstated; or

(B) an investment the market value of which is materially overstated.

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

Sec. 66.104. INTERVENTION RELATING TO EXAMINATION OF AFFAIRS. (a) The commissioner may intervene in the affairs of an association if a person who participates in the affairs of the association or a subsidiary or savings and loan holding company of the association:

(1) refuses or is about to refuse to submit to interrogation under oath by the commissioner or the commissioner's agent with respect to the association's affairs; or

(2) materially alters, conceals, removes, or falsifies or is about to materially alter, conceal, remove, or falsify a book or record of the association or a subsidiary of the association.

(b) The commissioner may intervene in the affairs of an association if the association:

(1) fails to maintain books and records from which the true financial condition of the association or the state of the association's affairs can be determined; or

(2) refuses to direct a person having possession of the books, papers, records, or accounts of the association or the association's subsidiary to permit the commissioner or the commissioner's authorized representative to inspect or examine those documents or accounts.

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

Sec. 66.105. TEMPORARY SUPERVISORY ORDER. (a) If the commissioner has reasonable cause to believe that one or more of the grounds for intervention under Section 66.101 exists or is imminent, the commissioner may issue without notice and hearing one or more of the following types of temporary supervisory orders to correct and eliminate the grounds for supervisory action:

(1) an order to cease and desist from continuing a particular action, an order to take affirmative action, or both;

(2) an order suspending or prohibiting a person who participates in the affairs of the association from further participating in the affairs of the association or of another association;

(3) an order requiring divestiture of control of an association obtained under Subchapter L, Chapter 62; or

(4) an order placing the affairs of the association under the control of a conservator designated in the order, who may take possession and control of the books, records, property, assets, liabilities, and business of the association and manage the association under the direction of the commissioner.

(b) An order under this section:

(1) must contain a reasonably detailed statement of the facts on which the order is based; and

(2) takes effect when issued.

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

Sec. 66.106. SERVICE OF TEMPORARY SUPERVISORY ORDER. (a) A temporary supervisory order may be served by personal delivery by an

agent of the commissioner or by certified or registered mail.

(b) Service is complete when an officer or director of the association receives the order.

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

Sec. 66.107. HEARING ON TEMPORARY SUPERVISORY ORDER; FINAL ORDER. (a) A temporary supervisory order issued under Section 66.105 becomes final and unappealable on the 16th day after the date on which the order is issued unless before that day the association or a person affected by the order requests a hearing before the commissioner to determine whether the order should be vacated, made permanent, or modified.

(b) The commissioner shall set the matter for hearing to be held not earlier than the 11th day or later than the 30th day after the date of the request. The hearing must be held at the offices of the Department of Savings and Mortgage Lending in Austin.

(c) After the hearing, the commissioner may enter a final order that vacates the temporary order or makes the temporary order permanent in its original form or a modified form that is consistent with the facts found by the commissioner.

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

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.031, eff. September 1, 2007.

Sec. 66.108. PLAN OF OPERATION OF ASSOCIATION AFTER ORDER OF TEMPORARY CONSERVATORSHIP. (a) Before or during a hearing under Section 66.107 on a temporary supervisory order placing an association under the control of a conservator, the board of the association may present to the commissioner a plan to continue the operation of the association in a manner that will correct or eliminate the grounds on which the order is based.

(b) If the commissioner approves the plan or a modification of the plan, the commissioner shall vacate the order placing the association under conservatorship, conditioned on the implementation and diligent prosecution of the plan.

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

Sec. 66.109. ENFORCEMENT OF SUPERVISORY ORDER. (a) The commissioner, after giving notice, may assess against an association or another person designated in a final supervisory order who violates the order, or both, an administrative penalty of not more than $1,000 each for each day of the violation. The association may not reimburse or indemnify a person for any part of the penalty.

(b) In addition to any other remedy provided by law, the commissioner may institute in a district court in Travis County:

(1) a suit for injunctive relief to stop or prevent a violation of a supervisory order; or

(2) a suit for injunctive relief and to collect the administrative penalty.

(c) A bond is not required of the commissioner with respect to injunctive relief granted under this section.

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

Sec. 66.110. STAY OF SUPERVISORY ORDER. (a) A temporary supervisory order may not be stayed pending a hearing unless the commissioner orders a stay.

(b) A final supervisory order may not be stayed pending judicial review unless the reviewing court orders a stay for good cause.

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

Sec. 66.111. DISCLOSURE OF INFORMATION IN SUPERVISORY ORDER; CONFIDENTIALITY. (a) Except as provided by Subsection (b) or (c), information contained in a temporary or final supervisory order or a notice, correspondence, or other record relating to the order is confidential.

(b) The commissioner, for good reason as determined by the commissioner, may disclose the information described by Subsection (a) in a hearing or judicial proceeding under Section 66.107, 66.109, or 66.110 or in a proceeding to assert a defense under Section 66.403.

(c) The commissioner may disclose the information described by Subsection (a) to a department, agency, or instrumentality of this or another state or the United States if the commissioner determines that disclosure is necessary or proper to enforce the laws of this or another state or the United States.

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

SUBCHAPTER D. CONSERVATORSHIP

Sec. 66.151. PLACEMENT OF ASSOCIATION UNDER CONSERVATORSHIP. If the commissioner does not approve a plan to continue the operation of an association under Section 66.108, the conservator shall continue to manage the affairs of the association unless the temporary conservatorship order is modified or vacated:

(1) by order of the commissioner; or

(2) as a result of judicial review.

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

Sec. 66.152. DUTIES OF CONSERVATOR. (a) The conservator and any deputy or assistant conservator appointed by the commissioner, under the direction and supervision of the commissioner, shall:

(1) take possession and control of the books, records, property, assets, liabilities, and business of the association; and

(2) conduct the business and affairs of the association.

(b) The conservator shall:

(1) undertake to remove the causes and conditions that made the conservatorship necessary; and

(2) during the conservatorship, report to the commissioner as required by the commissioner.

(c) The conservator shall take measures necessary to preserve, protect, and recover the assets or property of the association, including a claim or cause of action that belongs to or may be asserted by the association. The conservator may deal with that property in the capacity of conservator.

(d) The conservator may file, prosecute, or defend a suit brought by or against the association if the conservator considers it necessary to protect the interested party or property affected by the suit.

(e) A suit filed by the conservator under Subsection (c) must be brought in Travis County.

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

Sec. 66.153. TERM OF CONSERVATOR. The conservator shall serve until the purposes of the conservatorship are accomplished.

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

Sec. 66.154. TRANSFER OF MANAGEMENT OF REHABILITATED ASSOCIATION. If the association is rehabilitated, the conservator shall return the management of the association to the association's board under terms that are reasonable and necessary to prevent a recurrence of the conditions that created the need for the conservatorship.

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

Sec. 66.155. SCOPE OF AUTHORITY OF OTHER PERSONS DURING CONSERVATORSHIP. During the conservatorship, a person who participates in the affairs of the association shall act according to the conservator's instructions and may exercise only the authority that the conservator expressly grants.

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

Sec. 66.156. COST OF CONSERVATORSHIP. (a) The commissioner shall determine the cost of the conservatorship.

(b) The cost of conservatorship shall be paid from the association's assets.

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

Sec. 66.157. VENUE. A suit filed against an association or its conservator while a conservatorship order is in effect must be

brought in Travis County.

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

SUBCHAPTER E. VOLUNTARY SUPERVISORY CONTROL

Sec. 66.201. PLACEMENT OF ASSOCIATION UNDER VOLUNTARY SUPERVISORY CONTROL. (a) An association's board may consent to the commissioner's placement of the association under supervisory control.

(b) The commissioner may appoint the supervisor and one or more deputy supervisors.

(c) Supervisory control continues until the conditions for which the supervisory control was imposed are corrected.

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

Sec. 66.202. POWERS OF SUPERVISORS. A supervisor or deputy supervisor has the powers of a conservator under Subchapter D and any other power established by agreement between the commissioner and the association's board of directors.

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

Sec. 66.203. COST OF SUPERVISORY CONTROL. The cost of the supervisory control of an association shall be set by the commissioner and paid by the association.

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

SUBCHAPTER F. CLOSING

Sec. 66.251. CLOSING OF ASSOCIATION BY BOARD RESOLUTION. An association's board, by resolution and with the commissioner's consent, may close the association and tender to the commissioner for disposition as provided by this subchapter the assets and all the affairs of the association.

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

Sec. 66.252. CLOSING OF ASSOCIATION BY COMMISSIONER'S ORDER. The commissioner or the commissioner's representative may close an association if the commissioner determines after an examination that:

(1) the interests of the depositors and creditors of the association are jeopardized because of:

(A) the association's insolvency or imminent insolvency; or

(B) a substantial dissipation of the association's assets or earnings because of a violation of a law or an unsafe or unsound practice; and

(2) it is in the best interest of the depositors and creditors to close the association and liquidate the association's assets.

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

Sec. 66.253. NOTICE OF CLOSING. (a) Immediately after an association is closed by its board or by the commissioner under this subchapter, the commissioner shall post at the main entrance of the association an appropriate notice of the closure. After notice is posted, a judgment lien, attachment lien, or other voluntary lien may not attach to an asset of the association, and a director or an officer or agent of the association may not:

(1) act for the association; or

(2) convey, transfer, assign, pledge, mortgage, or encumber an asset of the association.

(b) An attempt to take an action prohibited under Subsection (a)(2) after the notice is posted or in anticipation of posting the notice, including preferring in any manner a depositor or creditor of the association, is void.

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

Sec. 66.254. EFFECT OF CLOSING. (a) On closing an association under this subchapter, the commissioner may:

(1) liquidate the association as provided by Subchapter E; or

(2) tender the association's assets and all the association's affairs to the Federal Deposit Insurance Corporation and appoint the Federal Deposit Insurance Corporation as receiver or liquidating agent to act in accordance with this chapter or federal law.

(b) The Federal Deposit Insurance Corporation on accepting the tender and appointment prescribed by Subsection (a)(2) may:

(1) act without bond or other security as to the appointment; and

(2) without court supervision, exercise any right, power, or privilege provided by the laws of this state to a receiver or liquidating agent, as applicable, and any applicable right, power, or privilege available under federal law.

(c) On acceptance of the appointment prescribed by Subsection (a)(2), possession of and title to all the assets, business, and property of the association pass to the Federal Deposit Insurance Corporation without the execution of any instrument transferring title or right of use.

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

Sec. 66.255. HEARING ON COMMISSIONER'S ORDER. (a) Not later than the second day, excluding legal holidays, after the date on which the commissioner closes an association under Section 66.252, the association, by resolution of its board, may sue in a district court of Travis County to enjoin the commissioner from taking further action under this subchapter.

(b) The court, without notice or hearing, may restrain the commissioner from taking further action until after a hearing on the suit is held. If the court restrains the commissioner, the court shall instruct the commissioner to hold the assets and affairs of the association in the commissioner's possession until disposition of the suit. On receipt of this instruction, the commissioner shall refrain from taking further action, other than a necessary or proper action approved by the court to prevent loss or depreciation in the value of the assets.

(c) The court as soon as possible shall hear the suit and shall enter a judgment enjoining or refusing to enjoin the commissioner from proceeding under this subchapter.

(d) The commissioner, regardless of the judgment entered by the court or any supersedeas bond filed, shall retain possession of the association's assets until final disposition of any appeal of the judgment.

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

SUBCHAPTER G. LIQUIDATION

Sec. 66.301. LIQUIDATION OF ASSOCIATION. (a) If the commissioner doubts that an association subject to a conservatorship order can be rehabilitated, the commissioner may set a hearing to determine whether the association should be liquidated. Not later than the 10th day before the hearing date, notice of the hearing shall be given by certified mail to the officers and directors of the association and by publication in a newspaper of general circulation in the county in which the principal office of the association is located.

(b) If the commissioner finds that the association cannot be rehabilitated and it is in the public interest and the best interest of the savings account holders and creditors of the association that the bank be closed and its assets liquidated, the commissioner by liquidation order may appoint a liquidating agent and dissolve the association.

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

Sec. 66.302. REMOVAL OR REPLACEMENT OF LIQUIDATING AGENT. (a) The commissioner, with or without cause, may remove a liquidating agent and appoint another agent.

(b) If a liquidating agent resigns, dies, or otherwise becomes unable to serve, the commissioner shall promptly appoint another agent.

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

Sec. 66.303. DUTIES OF LIQUIDATING AGENT. (a) Under the commissioner's supervision, the liquidating agent shall:

(1) receive and take possession of the books, records,

assets, and property of the association;

(2) sell, enforce collection of, and liquidate the assets and property of the association;

(3) sue in the name of the liquidating agent or the association;

(4) defend an action brought against the liquidating agent or the association;

(5) receive, examine, and pass on a claim brought against the association, including a claim of a depositor;

(6) make distributions to and pay creditors, depositors, shareholders, and members of the association as their interests appear;

(7) from time to time make a ratable liquidation dividend on claims that have been proved to the satisfaction of the association's board of directors or the liquidating agent or that have been adjusted by a court;

(8) after the association's assets have been liquidated, make further liquidation dividends on claims previously proved or adjusted; and

(9) execute documents and perform any other action that the liquidating agent considers necessary or desirable to the liquidation.

(b) For purposes of making a further liquidation dividend under Subsections (a)(7) and (8), the liquidating agent may accept the statement of an amount due a claimant as shown on the association's books and records instead of a formal proof of claim filed on the claimant's behalf.

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

Sec. 66.304. NOTICE. (a) Under the commissioner's supervision, the liquidating agent shall give notice to creditors and savings account holders directing them to present and prove their claims and requiring them to file a written proof of claim at the address designated in the notice.

(b) The notice shall be published once a week for three successive weeks in a newspaper of general circulation in each county in which the association maintained an office or branch to transact business on the date the association ceased unrestricted operations.

(c) Not later than the 30th day after the date on which the notice is first published, the liquidating agent shall mail a similar notice to each depositor and creditor named in the books of the association at the address shown in those books.

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

Sec. 66.305. PRESENTATION OF CLAIM. (a) To be entitled to priority, each person asserting a claim against an association being liquidated under this subchapter must present the claim in writing to the commissioner or the liquidating agent at the address designated in the notice under Section 66.304 before the last day of the 18th month after the date the notice is first published.

(b) The claim must:

(1) contain a statement of the facts on which the claim is based;

(2) set out any right of payment priority or other specific right asserted by the claimant; and

(3) be signed and sworn to by the claimant.

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

Sec. 66.306. PRIORITY OF CLAIMS. On liquidation of an association, claims for payment have the following priority:

(1) obligations incurred by the commissioner or the liquidating agent, fees and assessments due the Department of Savings and Mortgage Lending, and expenses of liquidation, all of which may be covered by the proper reserve of money;

(2) approved claims of creditors, to the extent that the claims are secured by, or constitute a lien on, the assets or property of the association;

(3) approved claims of depositors against the general liquidating account of the association;

(4) approved claims of general creditors and the unsecured portion of a creditor obligation described by Subdivision (2);

(5) otherwise approved claims that were not filed within the time prescribed by Section 66.305;

(6) approved claims of subordinated creditors; and

(7) claims of shareholders of the association.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.032, eff. September 1, 2007.

Sec. 66.307. ACTION ON CLAIM. (a) Within three months after the date of receipt of a claim against an association being liquidated, the liquidating agent shall approve or reject the claim in whole or in part, unless that period is extended by written agreement with the claimant.

(b) A liquidating agent who approves the claim or a part of the claim shall classify the claim and enter the claim and the action taken in a claim register.

(c) A liquidating agent who rejects the claim in whole or in part, or who denies a right of payment priority or any other right asserted by the claimant, shall notify the claimant of the action by registered mail.

(d) An approved claim presented after the declaration and payment of any dividend and on or before the last day of the 18th month after the date on which notice is first published under Section 66.304 qualifies to participate in dividends previously paid before an additional dividend is declared. A claim that was not presented during that period does not qualify to participate in a dividend or distribution of assets until all approved claims filed during that period are fully paid.

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

Sec. 66.308. HEARING ON CLAIM; APPEAL OF ADVERSE DETERMINATION OF CLAIM. (a) A claimant may appeal an adverse determination of a claim by filing suit on the claim in a district court of Travis County within three months after the date on which notice is mailed under Section 66.307.

(b) The determination on a claim becomes final and is not subject to review if suit is not filed in accordance with Subsection (a).

(c) Review by a district court under Subsection (a) is by trial de novo.

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

Sec. 66.309. PAYMENT OF FINAL DIVIDEND. (a) The liquidating agent may not pay a final dividend before the first day of the 19th month after the date notice is first published under Section 66.304.

(b) The liquidating agent shall declare and pay a final dividend after:

(1) the period provided by Subsection (a) expires; and

(2) the liquidating agent liquidates each asset of the association capable of being liquidated or receives sufficient money from the liquidation to:

(A) pay the costs of the liquidation;

(B) pay all claims that have been presented and established; and

(C) leave money available to pay all nonclaiming depositors and creditors of the association.

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

Sec. 66.310. DEPOSIT OF MONEY BY LIQUIDATING AGENT. The liquidating agent shall deposit all unclaimed dividends and all money available for nonclaiming depositors and creditors in one or more state-chartered financial institutions for the benefit of the depositors and creditors entitled to the dividends or money.

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

Sec. 66.311. PAYMENT OF NONCLAIMING DEPOSITORS AND CREDITORS. (a) Except as provided by Subsection (b), the liquidating agent, on demand, shall pay a depositor or creditor of the association who does not make a claim under Section 66.305 any amount held by the liquidating agent for the benefit of the depositor or creditor.

(b) If the liquidating agent has a doubt about the identity of a claimant or the claimant's right to the money, the liquidating agent shall reject the claim and notify the claimant by registered mail.

(c) The liquidating agent's rejection of a claim becomes final if the claimant does not file suit against the liquidating agent to

recover the money in a district court of Travis County within three months after the date on which the notice is mailed.

(d) A suit under Subsection (c) is an action in rem. Judgment is binding on all persons interested in the money.

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

Sec. 66.312. COST OF LIQUIDATION. (a) The commissioner shall determine the cost of the liquidation.

(b) The cost of liquidation shall be paid from the association's assets as the commissioner directs.

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

Sec. 66.313. FINAL REPORT. After paying a final dividend as provided by Section 66.309 and performing any necessary or proper action in liquidating the association's assets for the benefit of the depositors and creditors of the association, the liquidating agent shall file with the commissioner a final report of the liquidation.

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

Sec. 66.314. CONTINUED EXISTENCE OF ASSOCIATION FOLLOWING LIQUIDATION. For the purposes of adjusting and settling claims not disposed of during the liquidation, the association continues to exist until the third anniversary of the date the liquidation order is issued.

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

Sec. 66.315. SPECIAL LIQUIDATING AGENT. At the completion of the liquidation, the commissioner may appoint a special liquidating agent if necessary to adjust and settle undisposed claims.

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

Sec. 66.316. CLOSING OF LIQUIDATION; ORDER AND LIABILITY. (a) The liquidating agent shall certify the completion of the liquidation to the commissioner, who shall then issue an order closing the liquidation.

(b) After the commissioner issues the order, the commissioner and the liquidating agent are discharged from any further duty or liability in connection with the administration of the association's affairs.

(c) After the closing order, a person does not have a claim, suit, or action against the commissioner or the liquidating agent, individually or in an official capacity, except a suit to recover an unclaimed deposit as provided by this subchapter.

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

Sec. 66.317. ADMINISTRATIVE PROCEDURE. The procedures for a contested case hearing under Chapter 2001, Government Code, apply to a hearing set by the commissioner under this subchapter.

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

SUBCHAPTER H. RECEIVERSHIP OF UNINSURED ASSOCIATIONS

Sec. 66.351. PLACEMENT OF CERTAIN ASSOCIATIONS IN RECEIVERSHIP. (a) After a final liquidation order has been issued under Subchapter F or G for an association the deposits of which are not insured by the Federal Deposit Insurance Corporation or another state or federal agency, the commissioner or liquidating agent may apply to a district court of Travis County to appoint a receiver for the association.

(b) The court shall appoint a receiver if the court finds substantial evidence that:

(1) the commissioner has met all applicable requirements of Subchapter F or G for issuing the liquidation order;

(2) service of the liquidation order has been completed as provided by Section 66.106; and

(3) the order is a final unappealable order under Subchapter F or G.

(c) The court shall appoint the liquidating agent appointed during the liquidation of the association to serve as transitional receiver during the first 60 days of the receivership. The court may

appoint a different receiver for the remainder of the receivership.

(d) After the court appoints a receiver, liquidation of the association under the supervision of the commissioner ends and the receiver shall liquidate the association under the supervision of the court.

(e) A receiver is governed by:

(1) Subchapter F, to the extent that subchapter is not inconsistent with this section;

(2) Subchapter G, other than Sections 66.302 and 66.316, and to the extent that subchapter is not inconsistent with this section; and

(3) state law applicable to receiverships generally to the extent the law is not inconsistent with this chapter.

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

Sec. 66.352. DUTIES OF RECEIVER. On appointment, the receiver shall:

(1) immediately take charge of the affairs of the association, subject to the direction of the court; and

(2) conduct the business of the association or act as necessary to conserve the assets and protect the rights of the depositors or creditors and shareholders and members of the association.

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

Sec. 66.353. COMPENSATION OF RECEIVER. The receiver is entitled to compensation as determined by the court.

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

Sec. 66.354. EFFECT OF RECEIVERSHIP ON COMMISSIONER AND LIQUIDATING AGENT. (a) On appointment of the receiver, the commissioner and liquidating agent are discharged from further duty in connection with the administration or regulation of the affairs of the association and are not liable, individually or in an official capacity, for an action or a failure to act while the association was

in liquidation under this chapter.

(b) The appointment or the action of a receiver under this subchapter does not invalidate an authorized action taken by the liquidating agent under Subchapter G. The prior action of the liquidating agent is considered valid as if the action had been approved by the court in the receivership proceedings.

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

Sec. 66.355. RECEIPT OF ITEMS AS EVIDENCE IN RECEIVERSHIP PROCEEDING; CERTIFICATION. (a) A book, record, document, or paper of the association received and held by the receiver during the receivership proceeding or a certified copy of one of those items, under the hand and official seal of the receiver, is admissible as evidence in a case brought by or against the receiver without additional evidence of authenticity except for a certificate of the receiver stating that the item was received from the custody of the association or found among the association's effects.

(b) In a case brought by or against the receiver, the receiver may:

(1) certify the correctness of a paper, document, or record of the receiver's office, including an item described by Subsection (a); and

(2) certify under seal of the receiver to a fact contained in the paper, document, or record in evidence in a case in which the original would be evidence.

(c) When admitted into evidence, the original or a certified copy or part of an item described by Subsection (b) becomes prima facie evidence of the facts disclosed in the item.

(d) This section applies to a case brought by or against the liquidating agent before the appointment of a receiver as if the case had been brought by or against the receiver.

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

Sec. 66.356. TITLE AND CUSTODY OF ASSOCIATION'S ASSETS. (a) The property and assets of the association are in the custody of the court from the date the receivership begins.

(b) The receiver and a receiver's successor in office have

title to all property, contracts, and rights of action of the association, wherever located, beginning on the date the order directing the receiver to take possession is entered. The title of the receiver relates back to the date the liquidation of the association begins unless the court provides otherwise.

(c) The filing or recording of the order in a record office of the state has the same effect for notice purposes as a filed or recorded deed, bill of sale, or other evidence of title.

(d) If the court considers it desirable to protect the assets of the association, the court may require a bond from the receiver, in an amount set by the court, to be paid from the association's assets.

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

SUBCHAPTER I. MISCELLANEOUS PROVISIONS

Sec. 66.401. DERIVATIVE SUIT. (a) The commissioner may bring a derivative suit on behalf of an association on an unpursued cause of action if:

(1) the commissioner determines that the suit should be brought to protect the public interest or the interest of the association or the shareholders, members, or creditors of the association; and

(2) the association has not brought suit on the action before the 31st day after the date on which the commissioner gives notice to the association that suit should be brought.

(b) Except as provided by another statute that provides for mandatory venue, venue is in a district court of Travis County.

(c) The commissioner may employ legal counsel to bring and prosecute a derivative suit. The commissioner may:

(1) pay the counsel from funds appropriated for the operation of the Department of Savings and Mortgage Lending; or

(2) require the association for which the suit is brought to pay the counsel directly or to reimburse the Department of Savings and Mortgage Lending for the payment.

(d) The association shall be paid an amount equal to the amount of the proceeds of a judgment on a suit brought under this section less unreimbursed costs and expenses, including attorney's fees, incurred by the Department of Savings and Mortgage Lending in

prosecuting the suit.

(e) In this section, "unpursued cause of action" means an existing claim belonging to an association on which a suit or other effective action has not been filed or taken by or on behalf of the association on or before the last day of the sixth month after the date on which the cause of action arose, involving:

(1) a claim for monetary damages or recovery of property;

(2) a claim for equitable relief;

(3) a cause of action for breach of contract or for enforcement of a contract; or

(4) a claim on a fidelity bond.

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

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.033, eff. September 1, 2007.

Sec. 66.402. PAYMENT OF INSURED DEPOSIT LIABILITIES BY FDIC. If the Federal Deposit Insurance Corporation pays the insured deposit liabilities of an association that has been closed or is being liquidated under this chapter, regardless of whether the Federal Deposit Insurance Corporation has become receiver or liquidating agent, the Federal Deposit Insurance Corporation is subrogated, to the extent of the payment, to all rights that the owners of the savings accounts or deposits have against the association.

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

Sec. 66.403. ENFORCEABILITY OF LOAN PROMISE OR AGREEMENT MADE BY ASSOCIATION BEFORE CONSERVATORSHIP OR SUPERVISORY CONTROL. If a promise or agreement to lend money is not otherwise unenforceable under Chapter 26, Business & Commerce Code, and if the promise or agreement is made by the association before the association is placed under conservatorship or supervisory control, the promise or agreement or a memorandum of the promise or agreement is enforceable against the association only if the promise or agreement or memorandum:

(1) is in writing and states the material terms of the loan and the loan's repayment;

(2) is signed by an authorized officer or employee of the association and the person to whom the promise or agreement was made; and

(3) is approved by the association's board.

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

CHAPTER 67. FOREIGN FINANCIAL INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 67.001. LIMITATION ON RIGHT TO DO BUSINESS AS SAVINGS AND LOAN ASSOCIATION. (a) A person may not do business as a savings and loan association in this state or maintain an office in this state for the purpose of doing business unless the person is a:

(1) domestic association;

(2) federal association; or

(3) foreign association that holds a certificate of authority issued under Subchapter I, Chapter 62, or Section 61, Chapter 61, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 881a-60, Vernon's Texas Civil Statutes).

(b) Subsection (a) does not prohibit activity that is not considered to be transacting business in this state under Section B, Article 8.01, Texas Business Corporation Act.

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

Sec. 67.002. APPLICATION OF LAW AND RULES. This subtitle and each rule adopted under this subtitle apply to the operations in this state of a foreign association and may be enforced by the commissioner.

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

Sec. 67.003. CONTRACTS CONSTRUED UNDER LAW OF THIS STATE. A contract between a foreign association and a resident of this state is governed by the laws of this state.

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

Sec. 67.004. FEDERAL ASSOCIATIONS. A federal association is not a foreign corporation or foreign association for purposes of this subtitle.

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

SUBCHAPTER B. POWERS OF FOREIGN ASSOCIATION; ELIGIBILITY OF ACCOUNTS FOR INVESTMENT

Sec. 67.101. POWERS OF FOREIGN ASSOCIATION; ELIGIBILITY OF ACCOUNTS FOR INVESTMENT. (a) A foreign association operating under a certificate of authority has the rights and privileges of an association created under this subtitle. The association's accounts are eligible for investment to the same extent as those of a domestic association.

(b) A foreign association may not be considered an association organized under the laws of this state.

(c) A foreign association operating in this state under this chapter may not exercise a power, perform a function, or offer a service that a domestic association may not exercise, perform, or offer.

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

SUBCHAPTER C. CERTIFICATE OF AUTHORITY

Sec. 67.201. RENEWAL OF CERTIFICATE. A foreign association may renew a certificate of authority by paying a renewal fee in January of each year. The finance commission by resolution shall set the fee annually.

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

Sec. 67.202. REVOCATION OF CERTIFICATE. (a) The commissioner may revoke a foreign association's certificate of authority on the failure or refusal of the association to comply with a final order of the commissioner.

(b) On revocation under Subsection (a), an agent of the association may not transact business in this state except to:

(1) receive a payment to apply to an active loan contract;

or

(2) pay a withdrawal request.

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

SUBCHAPTER D. EXAMINATION AND REGULATION

Sec. 67.301. FREQUENCY OF EXAMINATION. A foreign association may not be examined more than once each year.

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

Sec. 67.302. EXAMINATION CHARGES. A foreign association holding a certificate of authority shall pay:

(1) an examination fee in the amount set for a domestic association under Section 61.007;

(2) all travel expenses of the examination; and

(3) the amount of the examination expense that exceeds the amount of the examination fee, if any.

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

Sec. 67.303. AGREEMENT WITH REGULATORY AUTHORITY OF OTHER STATE. (a) The commissioner, in exercising the supervisory and regulatory authority granted under Chapter 66, may enter into a cooperative agreement with a regulatory authority of another state to facilitate regulation of a foreign association doing business in this state.

(b) The commissioner may accept a report of examination and other records from the regulatory authority of the other state instead of conducting an examination outside this state.

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

Sec. 67.304. COMMISSIONER'S AUTHORITY TO ISSUE ORDERS. The commissioner may issue an order against a foreign association holding a certificate of authority in the same manner provided by Chapter 66 for issuance of an order against a domestic association.

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

CHAPTER 89. MISCELLANEOUS PROVISIONS APPLICABLE TO SAVINGS AND LOAN ASSOCIATIONS

SUBCHAPTER A. GENERAL MISCELLANEOUS PROVISIONS

Sec. 89.001. APPLICABILITY OF CHAPTER 4, BUSINESS & COMMERCE CODE. Chapter 4, Business & Commerce Code, applies to an association with respect to an item paid, collected, settled, negotiated, or otherwise handled by the association for a customer.

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

Sec. 89.002. ACKNOWLEDGMENT OR PROOF TAKEN BY MEMBER, STOCKHOLDER, OR EMPLOYEE OF ASSOCIATION. A public officer who is qualified to take an acknowledgment or proof of a written instrument and who is a member or employee of, or a shareholder in, an association or federal association is not disqualified because of that relationship to the association or federal association from taking an acknowledgment or proof of a written instrument in which an association or federal association is interested.

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

Sec. 89.003. RENDITION OF CERTAIN PERSONAL PROPERTY FOR AD VALOREM TAXATION. (a) Each association and each federal association shall render for ad valorem taxation all of its personal property, other than furniture, fixtures, equipment, and automobiles, as a whole at the value remaining after deducting the following from the total value of its entire assets:

(1) all debts that it owes;

(2) all tax-free securities that it owns;

(3) its loss reserves and surplus;

(4) its savings liability; and

(5) the appraised value of its furniture, fixtures, and real property.

(b) The association or federal association shall render the personal property, other than furniture, fixtures, equipment, and automobiles, to the chief appraiser of the appraisal district in the

county in which its principal office is located.

(c) Furniture, fixtures, equipment, and automobiles of an association or federal association shall be rendered and valued for ad valorem taxation as provided by the Tax Code.

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

Sec. 89.004. INITIATION OF RULEMAKING BY ASSOCIATIONS. The finance commission shall initiate rulemaking proceedings if at least 20 percent of the associations petition the finance commission in writing requesting the adoption, amendment, or repeal of a rule.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 32, eff. Sept. 1, 2001.

Text of section effective until January 1, 2022

Sec. 89.005. EXEMPTION FROM SECURITIES LAWS. A savings account, certificate, or other evidence of an interest in the savings liability of an association or federal association is not considered a security under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes). A security of these associations, other than an interest in the savings liability of an association, is not subject to the registration requirements of that act. A person whose principal occupation is being an officer of an association is exempt from the registration and licensing provisions of that act with respect to that person's participation in a sale or other transaction involving securities of the association of which the person is an officer.

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

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.12, eff. January 1, 2022.

Text of section effective on January 1, 2022

Sec. 89.005. EXEMPTION FROM SECURITIES LAWS. A savings account, certificate, or other evidence of an interest in the savings

liability of an association or federal association is not considered a security under The Securities Act (Title 12, Government Code). A security of these associations, other than an interest in the savings liability of an association, is not subject to the registration requirements of that act. A person whose principal occupation is being an officer of an association is exempt from the registration and licensing provisions of that act with respect to that person's participation in a sale or other transaction involving securities of the association of which the person is an officer.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.12, eff. January 1, 2022.

Sec. 89.006. LIABILITY OF COMMISSIONER AND OTHER COMMISSION PERSONNEL; DEFENSE BY ATTORNEY GENERAL. (a) The commissioner, a member of the finance commission, a deputy commissioner, an examiner, or any other officer or employee of the Department of Savings and Mortgage Lending is not personally liable for damages arising from the person's official act or omission unless the act or omission is corrupt or malicious.

(b) The attorney general shall defend an action brought against a person described by Subsection (a) because of the person's official act or omission without regard to whether the person is an officer or employee of the department at the time the action is instituted.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.034, eff. September 1, 2007.

Sec. 89.007. ASSOCIATION AUTHORIZED TO CONDUCT SAVINGS AND LOAN BUSINESS UNDER PRIOR LAW NOW SUBJECT TO SUBTITLE. (a) An association or corporation that was authorized to conduct a building and loan association, savings and loan association, building society, or other similar business before January 1, 1964, and that has substantially the same purpose as a savings and loan association is subject to this subtitle. The name, rights, powers, privileges, and

immunities of each of those associations or corporations are governed, construed, extended, and limited by this subtitle to the same extent and effect as if the association or corporation had been incorporated under this subtitle.

(b) Except as provided by Subsection (d) and notwithstanding anything to the contrary in the entity's certificate of incorporation, bylaws, constitution, or rules, each association or corporation described by Subsection (a) has the rights, powers, privileges, and immunities conferred by this subtitle and is subject to the duties, liabilities, and restrictions imposed by this subtitle.

(c) Except as provided by Subsection (d), the articles of association, certificate of incorporation, or charter and the bylaws, constitutions, or other rules of each of those associations or corporations are:

(1) considered modified and amended to conform to this subtitle, regardless of whether the commissioner has issued or approved a conformed copy of the document; and

(2) void to the extent that the document is inconsistent with this subtitle.

(d) The obligations existing on January 1, 1964, of each association or corporation described by Subsection (a), including an obligation between the entity and one or more of its members and between the entity and any other person, are not impaired by this subtitle. Any valid contract existing on January 1, 1964, either between the members of the entity or between the entity and any other person, is not impaired by this subtitle. An association is not required to change its name.

(e) An association or corporation described by Subsection (a) may enforce in its name any contractual obligation of the association or corporation incurred before January 1, 1964. A demand, claim, or right of action against the association or corporation may be enforced against the association or corporation as fully and completely as it might have been enforced before January 1, 1964.

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

Sec. 89.008. OFFICES OF FEDERAL ASSOCIATIONS. A federal association that has been merged, consolidated, or converted into a

domestic or foreign savings bank or association is entitled to retain any authorized office under the terms provided for a foreign savings bank under Subchapter I, Chapter 92.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.31(a), eff. Sept. 1, 1999.

SUBCHAPTER B. ACCESS TO AND DISCLOSURE OF CERTAIN INFORMATION

Sec. 89.051. ACCESS TO BOOKS AND RECORDS OF ASSOCIATION. (a) The books and records of an association may be examined only by:

(1) the commissioner or the commissioner's representative in accordance with Sections 66.051, 66.053, and 66.054;

(2) a person authorized to act for the association;

(3) an agent of a governmental agency that has insured the savings accounts of the association; or

(4) a borrower or savings account holder of the association, in accordance with Subsection (b).

(b) A borrower or savings account holder of an association is entitled to examine only the books and records of the association that pertain to the person's loan or savings account.

(c) A person is entitled to a partial or complete list of the stockholders of a stock association or of the members of a mutual association only if expressly permitted by the association's board.

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

Sec. 89.052. DISCLOSURE OF INFORMATION HELD BY DEPARTMENT ABOUT AN ASSOCIATION; LIABILITY. (a) The commissioner and an examiner, supervisor, conservator, liquidator, inspector, deputy, assistant, clerk, or other employee of the Department of Savings and Mortgage Lending who is appointed or acting under this subtitle shall be removed from the person's position with the department if the person:

(1) does not keep secret a fact or information about an association obtained during an examination or because of the person's official position, except when the public duty of the person requires otherwise; or

(2) wilfully makes a false official report about the condition of an association.

(b) A report of an examination made to the commissioner is

confidential and is not a public record or available for public inspection, except:

(1) for good reason the commissioner may make the report public; and

(2) a copy of the report may be furnished to the Federal Home Loan Bank Board or to the Federal Home Loan Bank to meet the requirements of the Federal Home Loan Bank Act (12 U.S.C. Section 1421 et seq.).

(c) When a supervisory order is issued under Chapter 66, the commissioner shall report the existence of the order promptly to the finance commission but shall maintain the confidentiality of the content of the order.

(d) Unless this subtitle provides otherwise, this section does not apply to any fact or information or to a report of an investigation obtained or made by the commissioner or the commissioner's staff in connection with an application for a charter under this subtitle or with a hearing held by the commissioner under this subtitle. The fact, information, or report may be included in the record of the hearing.

(e) This section does not prevent the proper exchange of information relating to associations with the representatives of savings and loan departments of other states or any other department, agency, or instrumentality of this or another state or the United States if the commissioner determines the disclosure of the information is necessary or proper to enforce the laws of this or another state or the United States.

(f) An official who violates this section is liable to the person injured by the disclosure of the secrets.

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

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.035, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 7, eff. September 1, 2013.

SUBCHAPTER C. OFFENSES AND PENALTIES

Sec. 89.101. CRIMINAL SLANDER. (a) A person commits an offense if the person:

(1) knowingly makes, utters, circulates, or transmits to another person a statement that is untrue and derogatory to the financial condition of an association; or

(2) with intent to injure an association counsels, aids, procures, or induces another person to originate, make, utter, transmit, or circulate a statement or rumor that is untrue and derogatory to the financial condition of the association.

(b) An offense under Subsection (a) is a state jail felony.

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

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.062, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 8, eff. September 1, 2013.

Sec. 89.102. GENERAL ADMINISTRATIVE PENALTY. (a) The commissioner may require an association that knowingly violates this subtitle or a rule adopted under this subtitle to pay to the Department of Savings and Mortgage Lending an administrative penalty not to exceed $1,000 for each day that the violation occurs after notice of the violation is given by the commissioner.

(b) On the commissioner's certification that an association has not paid a penalty assessed under this section, the attorney general may file suit to collect the penalty.

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

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.036, eff. September 1, 2007.

SUBTITLE C. SAVINGS BANKS

CHAPTER 91. GENERAL PROVISIONS

Sec. 91.001. SHORT TITLE. This subtitle may be cited as the Texas Savings Bank Act.

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

Sec. 91.002. DEFINITIONS. In this subtitle:

(1) "Appropriate banking agency":

(A) means:

(i) with respect to a savings bank chartered by this state, the Department of Savings and Mortgage Lending;

(ii) with respect to a federal savings bank, the Office of the Comptroller of the Currency;

(iii) with respect to a savings and loan association chartered by this state, the Department of Savings and Mortgage Lending;

(iv) with respect to a federal savings and loan association, the Office of the Comptroller of the Currency;

(v) with respect to a bank chartered by this state, the Texas Department of Banking;

(vi) with respect to a national bank, the Office of the Comptroller of the Currency; and

(vii) with respect to a bank, savings bank, or savings and loan association chartered by another state, the chartering agency; and

(B) includes:

(i) in each case in which a state bank is a member of the Federal Reserve System, the board of governors of the Federal Reserve System;

(ii) in each case where required by the Federal Deposit Insurance Act (12 U.S.C. Section 1811 et seq.), the Federal Deposit Insurance Corporation; and

(iii) any successor of a state or federal agency specified by this subdivision.

(2) "Board" means the board of directors of a savings bank or the managers of a savings bank organized as a limited savings bank.

(3) "Capital stock" means the units into which the proprietary interest in a capital stock savings bank is divided.

(4) "Capital stock savings bank" means a savings bank authorized to issue capital stock.

(5) "Commissioner" means the savings and mortgage lending commissioner.

(6) "Company" means a corporation, partnership, trust, joint-stock company, association, unincorporated organization, or other legal entity, or a combination of any of those entities acting

together.

(7) "Deposit account" means a savings account, certificate of deposit, withdrawable deposit, demand deposit account, checking account, or any other term referring to the amount of money a savings bank owes an account holder as the result of the deposit of money in the savings bank.

(8) "Deposit liability" means the aggregate amount of money shown by the books of the savings bank to be owed the savings bank's deposit account holders after applying any legal or contractual reduction.

(9) "Domestic savings bank" means a savings bank organized under the laws of this state.

(10) "Earnings on account" means interest contractually payable or dividends declared payable to holders of deposit accounts in a savings bank.

(11) "Federal Deposit Insurance Corporation" includes any successor.

(12) "Federal savings bank" means a savings bank incorporated under the laws of the United States.

(13) "Finance commission" means the Finance Commission of Texas.

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

(15) "Foreign savings bank" means a savings bank:

(A) organized under the laws of:

(i) a state of the United States other than this state; or

(ii) the United States; and

(B) the principal office of which is located outside this state.

(16) "Holding company" means a company that directly or indirectly controls a savings bank or controls another company that directly or indirectly controls a savings bank.

(16-a) "Limited savings bank" means a savings bank electing to be organized as a limited liability company under this subtitle.

(17) "Loss reserves" means the aggregate amount of the reserves allocated by a savings bank solely to absorb losses.

(18) "Member" means:

(A) with respect to a mutual savings bank, a person:

(i) holding an account with the mutual savings

bank;

(ii) assuming or obligated on a loan in which the mutual savings bank has an interest; or

(iii) owning property that secures a loan in which the mutual savings bank has an interest; or

(B) with respect to a savings bank organized as a limited savings bank, a person who owns a membership interest in the limited savings bank.

(19) "Mutual savings bank" means a savings bank not authorized to issue capital stock.

(20) "Regulatory capital" means a common stockholders' equity, including retained earnings, noncumulative perpetual preferred stock and related earnings, minority interests in the equity accounts of fully consolidated subsidiaries, and other elements established by rules of the finance commission.

(21) "Savings bank" means an institution organized under or subject to this subtitle.

(22) "Shareholder" means the owner of capital stock.

(23) "Surplus" means the aggregate amount of:

(A) the undistributed earnings of a savings bank held as undivided profits or unallocated reserves for general corporate purposes; and

(B) paid-in surplus held by the savings bank.

(24) "Unsafe and unsound practice" means an action or inaction in the operation of a savings bank that is likely to:

(A) cause insolvency or substantial dissipation of assets or earnings; or

(B) reduce the ability of the savings bank to timely satisfy withdrawal requests of deposit account holders.

(25) "Withdrawal value of deposit account" means the net amount of money that may be withdrawn by an account holder from a deposit account after applying any legal or contractual reduction.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.32(a), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 867, Sec. 33, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 172, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.02, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.037, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 9, eff. September 1, 2013.

Sec. 91.003. CONTROL; SUBSIDIARY. (a) For purposes of this subtitle, a person controls a savings bank if the person has the power to direct or cause the direction of the management and policies of the savings bank directly or indirectly. A person is considered to control a savings bank if the person, individually or acting with others, directly or indirectly holds with the power to vote, owns, or controls, or holds proxies representing, at least 25 percent of the voting stock or voting rights of a savings bank.

(b) For purposes of this subtitle, a company is a subsidiary of a savings bank if the savings bank or another company directly or indirectly controlled by the savings bank controls the company. A savings bank is considered to control a company if the savings bank, directly or indirectly or acting with one or more other persons or through one or more subsidiaries:

(1) holds with the power to vote, owns, or controls, or holds proxies representing, more than 25 percent of the voting stock or voting rights of the company;

(2) controls in any manner the election of a majority of the directors of the company;

(3) is a general partner in the company; or

(4) has contributed more than 25 percent of the equity capital of the company.

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

Sec. 91.004. NOTICE OF HEARING; RIGHT TO RESPOND. (a) Notice of a hearing under this subtitle shall be given to each domestic and federal savings bank in the county in which the subject matter of the hearing is or will be located, except that notice of a hearing under an order under Chapter 96 shall be given to each party affected by the order.

(b) Each interested party is entitled to an opportunity to respond and present evidence and argument on each issue involved in a

hearing under this subtitle.

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

Sec. 91.005. RECORD OF PROCEEDING. On written request by an interested party, the commissioner shall keep a formal record of the proceedings of a hearing under this subtitle.

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

Sec. 91.006. DECISION OR ORDER. (a) A decision or order adverse to a party who appeared and participated in a hearing must be in writing and include separately stated findings of fact and conclusions of law on the issues material to the decision or order. Findings of fact that are stated in statutory language must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) A decision or order entered after a hearing is final and appealable on the 15th day after the date it is entered unless a party files a motion for rehearing before that date. If the motion for rehearing is overruled, a decision or order is appealable after the date an order overruling a motion for rehearing is entered.

(c) Each party to a hearing shall be promptly notified personally or by mail of a decision, order, or other action taken in respect to the subject matter of the hearing.

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

Sec. 91.007. FEES. The finance commission by rule shall:

(1) set the amount of fees the commissioner charges for:

(A) supervision and examination of savings banks;

(B) filing an application or other documents;

(C) conducting a hearing; and

(D) other services the commissioner performs; and

(2) specify the time and manner of payment of the fees.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 34, eff. Sept. 1, 2001.

CHAPTER 92. ORGANIZATIONAL AND FINANCIAL REQUIREMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 92.001. APPLICABILITY OF OTHER LAW. (a) With respect to a savings bank, other than a savings bank organized as a limited savings bank, organized before January 1, 2006, the Texas Business Corporation Act, the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), and other law relating to general business corporations apply to a savings bank to the extent not inconsistent with this subtitle or the proper business of a savings bank.

(b) With respect to a savings bank organized as a limited savings bank before January 1, 2006, the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes) and any other law relating to a limited liability company organized in Texas apply to a limited savings bank to the extent not inconsistent with this subtitle or the proper business of a limited savings bank.

(c) With respect to a savings bank, other than a savings bank organized as a limited savings bank, organized on or after January 1, 2006, the provisions of the Business Organizations Code applicable to general business corporations apply to a savings bank to the extent not inconsistent with this subtitle or the proper business of a savings bank.

(d) With respect to a savings bank organized as a limited savings bank on or after January 1, 2006, the provisions of the Business Organizations Code applicable to a limited liability company organized in this state apply to a limited savings bank to the extent not inconsistent with this subtitle or the proper business of a limited savings bank.

(e) With respect to a savings bank or limited savings bank organized before January 1, 2006, the finance commission may establish rules permitting a savings bank or limited savings bank to elect to be governed by the provisions of the Business Organizations Code to the extent not inconsistent with this subtitle or the proper business of a savings bank or limited savings bank.

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

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.03, eff.

September 1, 2005.

SUBCHAPTER B. INCORPORATION IN GENERAL

Sec. 92.051. APPLICATION TO INCORPORATE. (a) Five or more adult residents of this state may apply to incorporate a savings bank by submitting to the commissioner:

(1) an application to incorporate a savings bank that is:

(A) in a form specified by the commissioner; and

(B) signed by each incorporator; and

(2) the filing fee.

(b) An application must contain:

(1) two copies of the savings bank's articles of incorporation identifying:

(A) the name of the savings bank;

(B) the location of the principal office; and

(C) the names and addresses of the initial directors;

(2) two copies of the savings bank's bylaws;

(3) data sufficiently detailed and comprehensive to enable the commissioner to make findings under Section 92.058, including statements, exhibits, and maps;

(4) other information relating to the savings bank and its operation that the finance commission by rule requires; and

(5) financial information about each applicant, incorporator, director, officer, or shareholder that the finance commission by rule requires.

(c) Financial information described by Subsection (b) is confidential and not subject to public disclosure unless the commissioner finds that disclosure is necessary and in the public interest.

(d) The articles of incorporation and statements of fact must be signed and sworn to.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 35, eff. Sept. 1, 2001.

Sec. 92.052. ADDITIONAL REQUIREMENTS FOR CAPITAL STOCK SAVINGS BANK. (a) A capital stock savings bank's articles of incorporation must include a statement of:

(1) the aggregate number of shares of common stock that the savings bank may issue;

(2) the par value of each share or that the shares are without par value;

(3) whether the savings bank may issue preferred stock;

(4) the amount of stock that has been subscribed and will be paid for before the savings bank begins business;

(5) the name and address of each subscriber and the amount subscribed by each; and

(6) the amount of paid-in surplus with which the savings bank will begin business.

(b) Before approving the application of a capital stock savings bank, the commissioner shall require the savings bank to have an aggregate amount of capital in the form of stock and paid-in surplus the finance commission by rule specifies.

(c) The subscriptions for capital stock, less any lawful expenditures, shall be returned pro rata to the subscribers if:

(1) the application is not approved; or

(2) the savings bank does not begin business.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 36, eff. Sept. 1, 2001.

Sec. 92.053. ADDITIONAL REQUIREMENTS FOR MUTUAL SAVINGS BANK. (a) A mutual savings bank's articles of incorporation must include a statement of the amount of deposit liability of the savings bank and the amount of the expense fund with which the savings bank will begin business.

(b) Before approving the articles of incorporation of a mutual savings bank, the commissioner shall require the savings bank to have subscriptions for an aggregate amount of deposit accounts and an expense fund in an aggregate amount the finance commission by rule establishes as necessary for the successful operation of a mutual savings bank.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 37, eff. Sept. 1, 2001.

Sec. 92.054. MINIMUM INITIAL CAPITAL. (a) The finance

commission by rule shall set the minimum initial capital of a savings bank in an amount not less than the greater of:

(1) the amount required to obtain insurance of deposit accounts by the Federal Deposit Insurance Corporation; or

(2) the amount required of a national bank.

(b) The initial capital must be paid in cash before the savings bank may begin business.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 38, eff. Sept. 1, 2001.

Sec. 92.055. APPROVAL OF MANAGING OFFICER. (a) A savings bank may not begin business before:

(1) it presents to the commissioner the name and qualifications of its managing officer; and

(2) the commissioner approves the managing officer.

(b) An applicant is not required at a hearing on the application or in a public record to specify the name and qualifications of the managing officer of the savings bank.

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

Sec. 92.056. CORPORATE NAME. (a) The name of a savings bank must include the words "State Savings Bank" or the abbreviation "SSB," preceded by one or more appropriate descriptive words approved by the commissioner.

(b) The commissioner may not approve the incorporation of a savings bank that has the same name as another financial institution authorized to do business in this state under this subtitle, Subtitle A, or Subtitle B or a name so nearly resembling the name of another financial institution as to be calculated to deceive unless the savings bank is formed:

(1) by the reincorporation, reorganization, or consolidation of the other financial institution; or

(2) on the sale of the property or franchise of the other savings bank.

(c) A person that is not a state or federal savings bank may not do business under a name or title that:

(1) contains the words "savings bank";

(2) indicates or reasonably implies that the business being done is the type of business carried on or transacted by a savings bank; or

(3) is calculated to lead a person to believe that the business being done is the type of business carried on or transacted by a savings bank.

(d) On application by the commissioner or a savings bank, a court may enjoin a violation of this section.

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

Sec. 92.057. HEARING ON APPLICATION TO INCORPORATE. (a) On the filing of a complete application to incorporate, as defined by rules adopted by the finance commission, the commissioner shall:

(1) issue public notice of the application; and

(2) give any interested person an opportunity to appear, present evidence, and be heard for or against the application.

(b) A hearing officer designated by the commissioner shall hold the hearing.

(c) The hearing officer shall file with the commissioner a report on the hearing. The report must:

(1) specify findings of fact on each condition described by Section 92.058; and

(2) identify the evidence that forms the basis for those findings.

(d) A hearing is not required if:

(1) before the 11th day after the date the notice of application is published, no person has notified the commissioner in writing that the person intends to appear and present evidence at the hearing; and

(2) the commissioner finds that the application complies with all statutory requirements for approval.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 39, eff. Sept. 1, 2001.

Sec. 92.058. DECISION ON APPLICATION TO INCORPORATE; ISSUANCE OF CERTIFICATE OF INCORPORATION. (a) Not later than the 30th day after the date the hearing ends, the commissioner shall enter a final

order approving or denying the application.

(b) The commissioner may approve an application to incorporate only if:

(1) the prerequisites to incorporation required by this chapter are satisfied;

(2) the character, responsibility, and general fitness of each person named in the articles of incorporation command confidence and warrant belief that:

(A) the business of the savings bank will be honestly and efficiently conducted in accordance with the intent and purpose of this subtitle; and

(B) the savings bank will have qualified full-time management;

(3) there is a public need for the savings bank;

(4) the volume of business in the community in which the savings bank will conduct its business indicates a profitable operation is probable; and

(5) the operation of the savings bank will not unduly harm an existing savings bank or state or federal savings and loan association.

(c) On finding that each requirement of Subsection (b) is met, the commissioner shall:

(1) enter an order approving the application and stating the findings required by Subsection (b);

(2) issue under official seal a certificate of incorporation;

(3) deliver a copy of the approved articles of incorporation and bylaws to the incorporators; and

(4) permanently retain a copy of the articles of incorporation and bylaws.

(d) On delivery of the certificate to the incorporators, the savings bank:

(1) is a corporate body with perpetual existence unless terminated by law; and

(2) may exercise the powers of a savings bank beginning on the date the commissioner certifies receipt of satisfactory proof that the savings bank has received, free of encumbrance, the required amount of capital.

(e) If the commissioner cannot make all findings required by Subsection (b), the commissioner shall enter a written order denying

the application and stating the grounds for denial. The commissioner by certified mail shall deliver a copy of the order to the designated representative of the incorporators.

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

Sec. 92.059. JUDICIAL REVIEW. (a) An applicant may appeal a final order with the commissioner as defendant.

(b) A party to the action may appeal the court's decision. The appeal is immediately returnable to the appellate court and has precedence over any cause of a different character pending in that court.

(c) The commissioner is not required to give an appeal bond in a cause arising under this section.

(d) Filing an appeal under this section does not stay an order of the commissioner.

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

Sec. 92.060. PREFERENCE FOR LOCAL CONTROL. If more than one application to incorporate a new savings bank or establish an additional office of an existing savings bank in the same community is before the commissioner at the same time, the commissioner may give additional weight to the application of the applicant that has the greater degree of control vested in or held by residents of the community.

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

Sec. 92.061. DEADLINE FOR COMMENCING BUSINESS. (a) A savings bank shall begin business not later than the first anniversary of the date the commissioner approves the savings bank's application.

(b) On the request of the incorporators and for good cause shown, the commissioner may grant a reasonable extension of the deadline prescribed by Subsection (a).

(c) The commissioner may rescind the authority to operate of a savings bank that does not begin business as required by this subtitle.

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

Sec. 92.062. AMENDMENT OF ARTICLES OF INCORPORATION OR BYLAWS. (a) A savings bank may amend its articles of incorporation or bylaws by a resolution adopted by a majority vote of those entitled to vote attending an annual meeting or a special meeting called for that purpose.

(b) An amendment may not take effect before it is filed with and approved by the commissioner.

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

Sec. 92.063. CHANGE OF OFFICE OR NAME; ESTABLISHMENT OF ADDITIONAL OFFICES. (a) Only with the prior approval of the commissioner given in accordance with rules of the finance commission may a savings bank:

(1) establish an office other than the principal office stated in the savings bank's articles of incorporation;

(2) move an office from its immediate vicinity; or

(3) change the savings bank's name.

(b) The commissioner may permit a savings bank to establish additional offices in this state or another state in accordance with rules of the finance commission.

(c) On request, the commissioner shall give a person who might be affected by the establishment of additional offices or the change of office location or name an opportunity to be heard under Section 91.004.

(d) A savings bank may not establish or maintain a branch on the premises or property of an affiliate if the affiliate engages in commercial activities not permitted for a state savings bank or subsidiary of a state savings bank.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 40, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 217 (H.B. 944), Sec. 3, eff. May 25, 2007.

SUBCHAPTER C. INCORPORATION TO REORGANIZE OR MERGE

Sec. 92.101. PURPOSE OF INCORPORATION. A person may apply to incorporate a savings bank for the purpose of:

(1) purchasing the assets, assuming the liabilities other than liability to shareholders, and continuing the business of a financial institution the commissioner considers to be in an unsafe condition;

(2) acquiring an existing financial institution by merger; or

(3) facilitating a reorganization or merger with or into a savings bank under rules adopted by the finance commission.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.04, eff. September 1, 2005.

Sec. 92.102. INCORPORATION REQUIREMENTS. (a) An application to incorporate a savings bank under this subchapter must be submitted to the commissioner.

(b) The application must include information required by the commissioner or by rule of the finance commission.

(c) The savings bank must have capital in an amount determined by the commissioner to be sufficient to carry out the purposes for which incorporation is requested.

(d) Chapter 2001, Government Code, does not apply to the application if:

(1) the commissioner considers the financial institution to be reorganized or merged to be in an unsafe condition; or

(2) the savings bank incorporated under this subchapter does not survive the merger or is facilitating the continuation of an existing savings bank corporate reorganization as defined by rules adopted by the finance commission.

(e) If the commissioner considers the financial institution to be reorganized or merged to be in an unsafe condition, the application and all information relating to the application are confidential and not subject to public disclosure.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 41, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.05, eff. September 1, 2005.

Sec. 92.103. DECISION ON APPLICATION; ISSUANCE OF CERTIFICATE OF INCORPORATION. (a) The commissioner shall approve an application under this subchapter if the commissioner finds that:

(1) the business of the financial institution that is to be reorganized or merged can be effectively continued under the articles of incorporation; and

(2) the reorganization or merger is in the best interest of the public and the savers, depositors, creditors, and shareholders of the financial institution that is to be reorganized or merged.

(b) If the commissioner approves an application under Subsection (a), the commissioner shall:

(1) state findings under that subsection in writing; and

(2) issue a certificate of incorporation.

(c) Notwithstanding Section 92.353, the commissioner may approve an application to incorporate under this subchapter if the commissioner:

(1) considers the institution to be reorganized or merged to be in an unsafe condition; and

(2) finds from the application and all information submitted with the application that the reorganization or merger is in the best interest of the public and the savers, depositors, creditors, and shareholders of the institution that is to be reorganized or merged.

(d) On issuance of the certificate of incorporation, the savings bank:

(1) is a corporate body and a continuation of the former institution, subject to all its liabilities, obligations, duties, and relations; and

(2) may exercise the powers of a savings bank.

(e) In a merger, a shareholder of a capital stock financial institution has the same dissenter's rights as a shareholder of a domestic business corporation under the Texas Business Corporation Act.

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

SUBCHAPTER D. ADMINISTRATION

Sec. 92.151. ORGANIZATIONAL MEETING. (a) Not later than the 30th day after the date the corporate existence of a savings bank begins, the initial board shall hold an organizational meeting and elect officers and take other appropriate action to begin the business of the savings bank.

(b) For good cause shown, the commissioner by order may extend the deadline prescribed by Subsection (a).

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

Sec. 92.152. BOARD OF DIRECTORS. (a) A board of not fewer than five or more than 21 directors shall direct the business of a savings bank. The members or shareholders may change the number of directors, within the prescribed limits, by resolution adopted at an annual meeting or a special meeting called for that purpose.

(b) The members or shareholders shall elect the board by a majority vote at the annual meeting. The directors may be elected for staggered terms of longer than one year as provided by the savings bank's bylaws or articles of incorporation.

(c) The bylaws of a capital stock savings bank may require that all or a majority of the board be shareholders.

(d) A vacancy on the board is filled by the election by a majority vote of the remaining directors, regardless of whether a quorum exists, of a director to serve until the next annual meeting of members or shareholders. The remaining directors may continue to direct the savings bank until the vacancy is filled.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.33(a), eff. Sept. 1, 1999.

Sec. 92.153. QUALIFICATION OF DIRECTORS. (a) A person is not qualified to be a director of a savings bank if the person:

(1) is less than 18 years of age;

(2) has been adjudicated bankrupt or convicted of a criminal offense involving dishonesty or breach of trust, unless the commissioner gives the person prior written approval to be a

director;

(3) has a final judgment entered against the person for an amount of money that has remained unsatisfied or unsecured for more than six months after the date of the judgment's entry, unless:

(A) the commissioner gives the person prior written approval to be a director; or

(B) the judgment was satisfied of record more than one year before the election date; or

(4) is a director, officer, or employee of another savings bank, unless the commissioner gives the person prior written approval to be a director.

(b) The bylaws of a savings bank may prescribe other qualifications for a director.

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

Sec. 92.154. OFFICERS. (a) The officers of a savings bank are:

(1) a president;

(2) one or more vice presidents;

(3) a secretary; and

(4) other officers prescribed by the bylaws.

(b) The board elects the officers by a majority vote.

(c) The managing officer must be a director.

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

Sec. 92.155. CONFLICTS OF INTEREST. (a) Except as the finance commission by rule provides, a director or officer may not:

(1) receive directly or indirectly a commission on or benefit from a loan made by the savings bank;

(2) pay for services rendered to a borrower from the savings bank in connection with a loan;

(3) direct or require a borrower on a mortgage to negotiate an insurance policy on the mortgage property through a particular insurance company;

(4) attempt to divert to a particular insurance broker the business of borrowers from the savings bank;

(5) refuse to accept an insurance policy on the mortgaged

property because the policy was not negotiated through a particular insurance broker;

(6) become an obligor, including an endorser, surety, or guarantor, on a loan made by the savings bank;

(7) borrow or use, individually or as agent or partner of another, directly or indirectly, money of the savings bank;

(8) become the owner of real property on which the savings bank holds a mortgage unless the loan is fully secured by:

(A) a first-lien mortgage on property that:

(i) is to be occupied as the director's or officer's primary residence; and

(ii) is specifically approved in writing by the board; or

(B) a deposit maintained by the officer or director with the savings bank; or

(9) engage in any other activity the finance commission by rule prohibits.

(b) Except as the finance commission by rule provides, a savings bank may not make a loan to a corporation in which:

(1) a director or officer of the savings bank holds stock, options, or warrants to purchase stock in the amount of five percent or more of the outstanding stock; or

(2) the directors of the savings bank together hold stock, options, or warrants to purchase stock in the amount of five percent or more of the outstanding stock.

(c) A deposit with a banking corporation is a loan for purposes of this section.

(d) This section does not prohibit a savings bank from:

(1) making a loan to a religious corporation, club, or other membership corporation of which one or more directors or officers are members but in which they have no financial interest; or

(2) making a loan to or purchasing a guaranteed mortgage from a stock corporation if:

(A) a director does not own more than 15 percent of the corporation's capital stock; and

(B) the total amount of the corporation's capital stock owned by all directors of the savings bank is less than 25 percent.

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

by Acts 2001, 77th Leg., ch. 867, Sec. 42, eff. Sept. 1, 2001.

Sec. 92.156. FINANCIAL INSTITUTION BOND. (a) A savings bank shall maintain a financial institution bond that provides adequate coverage to protect the savings bank from loss:

(1) by or through dishonest or criminal action or omission, including fraud, theft, or misplacement, by any of the following persons:

(A) an officer or employee of the savings bank;

(B) an attorney retained by the savings bank;

(C) a nonemployee performing data processing services for the savings bank; or

(D) a director of the savings bank performing a duty of an officer or employee; or

(2) by other perils such as robbery, burglary, forgery, or alteration.

(b) A savings bank that employs a collection agent who is not covered by the bond required by Subsection (a) shall:

(1) ensure that the savings bank is included as a loss payee in the collection agent's crime coverage; and

(2) obtain a certificate of insurance evidencing the sufficiency of the collection agent's crime coverage.

(c) Subject to rules adopted under Subsection (e), the board shall, at least annually, review and approve:

(1) the coverage, including the amount of the coverage, provided by the bond and the form of the bond; and

(2) the sustainability of the corporate surety or insurer that issued the bond.

(d) The bond must provide that a cancellation or other termination by the corporate surety or insurer or by the insured is not effective until the earlier of:

(1) the date the commissioner approves; or

(2) the 30th day after the date written notice of the cancellation is given to the commissioner.

(e) The finance commission may adopt rules establishing:

(1) the coverage, including the amount of the coverage, that must be provided by the bond and the form of the bond; and

(2) the sustainability of the corporate surety or insurer that issues the bond.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.06, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 165 (H.B. 2579), Sec. 1, eff. September 1, 2017.

Sec. 92.157. MEETINGS OF MEMBERS OR SHAREHOLDERS. (a) The members or shareholders of a savings bank shall hold an annual meeting at the time fixed in the savings bank's bylaws.

(b) A special meeting may be called as provided by the savings bank's bylaws.

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

Sec. 92.158. VOTING RIGHTS. (a) The voting rights of a person entitled to vote at an annual or special meeting of a savings bank are the same as those of a shareholder of a domestic business corporation under the Texas Business Corporation Act.

(b) The bylaws of a savings bank must specify the voting requirements, including quorum requirements, for conducting business at a meeting of the members or shareholders.

(c) The bylaws of a savings bank must provide for the voting rights of the members or shareholders. The bylaws must provide the manner of computing the number of votes that a member or shareholder is entitled to cast. The bylaws of a capital stock savings bank may provide that only shareholders may vote.

(d) Voting may be in person or by proxy. A proxy must be in writing and signed by the member or shareholder or the member's or shareholder's duly authorized attorney-in-fact and be filed with the secretary of the savings bank. Unless otherwise specified in the proxy, a proxy continues until:

(1) a written revocation is delivered to the secretary; or

(2) the proxy is superseded by a subsequent proxy.

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

SUBCHAPTER E. OPERATIONS AND FINANCES

Sec. 92.201. BOOKS AND RECORDS. A savings bank shall maintain its books and records according to generally accepted accounting principles and to rules adopted by the finance commission.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 43, eff. Sept. 1, 2001.

Sec. 92.203. REGULATORY CAPITAL. A savings bank shall maintain regulatory capital in the amount prescribed by rule of the finance commission. The amount may not be less than the amount of regulatory capital required for a corresponding national bank.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 45, eff. Sept. 1, 2001.

Sec. 92.204. QUALIFIED THRIFT LENDER TEST. (a) A savings bank must:

(1) qualify under and continue to meet the qualified thrift lender test of Section 10(m), Home Owners' Loan Act (12 U.S.C. Section 1467a(m)); or

(2) maintain more than 50 percent of its portfolio assets in qualified thrift assets on a monthly average basis in at least nine out of 12 months.

(b) For purposes of Subsection (a)(2), "qualified thrift assets" means:

(1) qualified thrift investments as defined by 12 U.S.C. Section 1467a(m)(4)(C); and

(2) other assets determined by the commissioner, under rules adopted by the finance commission, to be substantially equivalent to qualified thrift investments described by Subdivision (1) or which further residential lending or community development.

(c) The commissioner may grant temporary or limited exceptions to the requirements of this section as the commissioner considers necessary.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.34(a), eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.07, eff.

September 1, 2005.

Sec. 92.205. COMPUTATION OF INCOME. (a) A savings bank shall close its books at the times provided by its bylaws to determine its gross income for the period since the date of the last closing of its books.

(b) A savings bank's net income for a period is computed by subtracting the amount of the savings bank's operating expenses for the period from the savings bank's gross income for the period.

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

Sec. 92.206. INSURANCE OF DEPOSIT ACCOUNTS. A savings bank shall obtain and maintain federal insurance of deposit accounts through an insurance corporation created by an Act of the United States Congress.

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

Sec. 92.207. LIMITATION ON ISSUANCE OF SECURITIES. A savings bank may issue a form of stock, share, account, or investment certificate only as authorized by this subtitle or as permitted for a national bank, federal savings and loan association, federal savings bank, or state bank.

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

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.08, eff. September 1, 2005.

Sec. 92.208. COMMON STOCK. (a) A savings bank may not issue common stock before the common stock is fully paid for in cash.

(b) A savings bank may not make a loan against the shares of its outstanding common stock.

(c) A savings bank may not purchase, directly or indirectly, its own issued common stock, except under a stock repurchase plan approved in advance by the commissioner.

(d) A savings bank may not retire or redeem common stock until:

(1) all liabilities of the savings bank are satisfied, including all amounts due to holders of deposit accounts, unless:

(A) prior written permission is obtained from the commissioner; and

(B) the retirement or redemption is authorized by a majority vote of the savings bank's shareholders at an annual meeting or a special meeting called for that purpose;

(2) the basis of the retirement or redemption is approved by the commissioner; and

(3) the savings bank files written consent of the Federal Deposit Insurance Corporation with the commissioner.

(e) Subsections (b) and (c) apply to the securities of the savings bank's holding company and affiliates.

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

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.09, eff. September 1, 2005.

Sec. 92.209. PREFERRED STOCK. (a) A savings bank may not issue preferred stock before the preferred stock is fully paid for in cash.

(b) A savings bank may not make a loan against the shares of its outstanding preferred stock.

(c) A savings bank may retire or redeem preferred stock in the manner provided by:

(1) the articles of incorporation; or

(2) a resolution of the board of the savings bank establishing the rights and preferences relating to the stock.

(d) The extent to which preferred stock may be included as regulatory capital of a savings bank is subject to the rules adopted by the finance commission.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 46, eff. Sept. 1, 2001.

Sec. 92.210. SERIES AND CLASSES OF PREFERRED STOCK. (a) The articles of incorporation may:

(1) authorize that shares of preferred stock be divided into and issued in series; and

(2) determine the rights and preferences of each series or part of a series.

(b) Each series must be clearly designated to distinguish its shares from the shares of other series or classes.

(c) The articles of incorporation may authorize the board by resolution to divide classes of preferred stock into series and to determine the rights and preferences of the shares of each series. A copy of the resolution must be submitted to the commissioner before the shares may be issued. The commissioner shall file the resolution in the commissioner's office if the resolution conforms to this subtitle. After the resolution is filed, it is considered an amendment of the savings bank's articles of incorporation.

(d) All shares of the same class of preferred stock must be identical except for the following rights and preferences:

(1) the rate of dividend;

(2) the terms, including price and conditions, under which shares may be redeemed;

(3) the amount payable for shares on involuntary liquidation;

(4) the amount payable for shares on voluntary liquidation;

(5) a sinking fund provision for the redemption or purchase of shares;

(6) the terms, including conditions, of conversion of shares that may be converted; and

(7) voting rights.

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

Sec. 92.211. DIVIDENDS ON CAPITAL STOCK. (a) The board of a capital stock savings bank may declare and pay a dividend out of current or retained income, in cash or additional stock, to the holders of record of the stock outstanding on the date the dividend is declared.

(b) Without the prior approval of the commissioner, a cash dividend may not be declared by the board of a savings bank that the commissioner considers:

(1) to be in an unsafe condition; or

(2) to have less than zero total retained income on the date of the dividend declaration.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.10, eff. September 1, 2005.

Sec. 92.212. USE OF SURPLUS ACCOUNTS AND EXPENSE FUND CONTRIBUTIONS. (a) At a savings bank's closing date, the savings bank may use all or part of a surplus account, whether earned or paid in, or expense fund contributions on its books to:

(1) meet expenses of operating the savings bank for the period just closed;

(2) make required transfers to loss reserves; or

(3) pay or credit earnings on deposit accounts.

(b) Paid-in surplus may be used instead of earnings to pay organizational and operating expenses and earnings on deposit accounts and to meet any loss reserve requirements.

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

Sec. 92.213. USE OF EXPENSE FUND CONTRIBUTIONS. (a) The expense of organizing a savings bank, its operating expenses, and earnings on accounts declared and paid or credited to its deposit account holders may be paid out of the expense fund until the savings bank's earnings are sufficient to pay those amounts.

(b) The amounts contributed to the expense fund are not a liability of the savings bank except as provided by this subchapter.

(c) The savings bank shall pay to the contributor dividends on the amount contributed to the same extent the savings bank pays dividends on a deposit account. An amount contributed to the expense fund is considered a deposit account of the savings bank.

(d) Contributions to the expense fund may be repaid to the contributors pro rata from the net earnings of the savings bank after provision for required loss reserve allocations and payment or credit of earnings declared on accounts.

(e) If the savings bank is liquidated before contributions to the expense fund are repaid, contributions to the expense fund that

remain unspent after the payment of expenses of liquidation, creditors, and the withdrawal value of deposit accounts shall be repaid to the contributors pro rata.

(f) The savings bank's books must reflect the expense fund.

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

SUBCHAPTER F. CONVERSION OF SAVINGS BANK TO OTHER FINANCIAL INSTITUTION

Sec. 92.251. CONDITIONS FOR CONVERSION. (a) The finance commission by rule shall establish the conditions under which a savings bank may convert to another financial institution.

(b) The rules must ensure that a conversion does not cause undue harm to the public interest or to another existing financial institution.

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

Sec. 92.252. APPLICATION FOR CONVERSION. (a) A savings bank may convert to another financial institution if a resolution declaring the conversion is adopted by a majority vote of the members or shareholders of the savings bank who are entitled to vote at an annual meeting or a special meeting called to consider the conversion.

(b) The application to convert must:

(1) be filed in the office of the commissioner not later than the 30th day after the date of the meeting; and

(2) include a copy of the minutes of the meeting, sworn to by the secretary or an assistant secretary.

(c) The copy of the minutes filed under Subsection (b) is presumptive evidence that the meeting was held and the resolution was adopted.

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

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.11, eff. September 1, 2005.

Sec. 92.253. ACTION BY COMMISSIONER ON APPLICATION. Not later than the 10th day after the date an application to convert is received, the commissioner shall:

(1) consent by written order to the conversion; or

(2) set a hearing on whether the conversion complies with rules adopted under Section 92.251.

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

Sec. 92.254. HEARING ON APPLICATION. (a) A hearing set under Section 92.253(2) must be held not later than the 25th day after the date the application is filed unless a later date is agreed to by the applicant and the commissioner.

(b) The commissioner or a hearing officer designated by the commissioner shall conduct the hearing.

(c) The hearing shall be conducted as a contested case under Chapter 2001, Government Code, except that:

(1) a proposal for decision may not be made; and

(2) the commissioner shall render a final decision or order not later than the 15th day after the date the hearing is closed.

(d) Chapter 2001, Government Code, governs a motion for rehearing and the availability of judicial review if the commissioner denies the application to convert.

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

Sec. 92.255. CONSUMMATION OF CONVERSION. Within three months after the date of the commissioner's written order consenting to the conversion, the savings bank shall consummate the conversion in the manner prescribed by the applicable law of this state or the United States.

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

Sec. 92.256. FILING OF CHARTER OR CERTIFICATE. (a) The new financial institution shall file with the commissioner:

(1) a copy of the charter issued to the new financial institution by the appropriate banking agency; or

(2) the certificate showing the organization of the new financial institution, certified by the secretary or assistant secretary of the appropriate banking agency.

(b) Failure to file the charter or certificate with the commissioner does not affect the validity of the conversion.

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

Sec. 92.257. EFFECT OF ISSUANCE OF CHARTER. On the issuance of a charter by the appropriate banking agency, the savings bank:

(1) ceases to be a savings bank incorporated under this subtitle; and

(2) is not subject to the supervision and control of the commissioner under this subtitle.

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

Sec. 92.258. CONTINUATION OF CORPORATE EXISTENCE. After a savings bank is converted to another financial institution:

(1) the corporate existence of the savings bank continues; and

(2) the new financial institution is considered to be a continuation of the savings bank that was converted.

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

Sec. 92.259. PROPERTY AND OBLIGATIONS OF CONVERTED SAVINGS BANK. The new financial institution:

(1) retains any property, right, or obligation of the converted savings bank; and

(2) to the extent the provisions can be made applicable, is subject to Sections 92.306-92.308 as if it were a new savings bank.

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

SUBCHAPTER G. CONVERSION OF OTHER FINANCIAL INSTITUTION TO SAVINGS BANK

Sec. 92.301. APPLICATION TO CONVERT. (a) Another financial institution may convert to a savings bank if the conversion is approved by a majority vote of the members or shareholders of the financial institution cast at an annual meeting or a special meeting called to consider the conversion.

(b) The application to convert must:

(1) be submitted to the commissioner and mailed to the appropriate banking agency not later than the 30th day after the date of the meeting; and

(2) include a copy of the minutes of the meeting, sworn to by the secretary or an assistant secretary.

(c) The copy of the minutes filed under Subsection (b) is presumptive evidence that the meeting was held and the conversion was approved.

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

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.12, eff. September 1, 2005.

Sec. 92.302. ELECTION OF DIRECTORS; EXECUTION AND ACKNOWLEDGMENT OF APPLICATION AND BYLAWS. (a) At the meeting under Section 92.301(a), the members or shareholders shall elect directors of the savings bank.

(b) The directors, or the president and secretary, shall execute two copies of an application for certificate of incorporation as provided by Subchapter B.

(c) Each director, or the president and secretary, shall sign and acknowledge the application for certificate of incorporation as a subscriber and shall sign and acknowledge the bylaws as an incorporator.

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

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.13, eff. September 1, 2005.

Sec. 92.303. REVIEW BY COMMISSIONER; APPROVAL. (a) On receipt of the application, the commissioner shall conduct an

examination of the financial institution seeking conversion.

(b) After the examination, the commissioner shall approve the conversion without a hearing if the commissioner determines that the converting financial institution is in sound condition and meets all requirements of Subchapter B and relevant rules of the finance commission.

(c) On approval of the conversion, the incorporators shall insert a paragraph preceding the testimonium clause in the certificate of incorporation stating that the savings bank is incorporated by conversion from another financial institution.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 47, eff. Sept. 1, 2001.

Sec. 92.304. HEARING ON DENIAL; APPEAL. (a) An applicant is entitled to a hearing under Chapter 2001, Government Code, if:

(1) the commissioner denies an application to convert; and

(2) a written request for a hearing is delivered to the commissioner not later than the 10th day after the date the application is denied.

(b) A hearing officer designated by the commissioner shall hold the hearing.

(c) The commissioner shall enter a final order approving or denying the application not later than the 30th day after the date the hearing is completed.

(d) An applicant may appeal a final order with the commissioner named as defendant. The commissioner is not required to file an appeal bond in a cause arising under this section. Filing an appeal under this section does not stay an order of the commissioner.

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

Sec. 92.305. CONTINUATION OF CORPORATE EXISTENCE. After another financial institution is converted to a savings bank:

(1) the corporate existence of the financial institution continues; and

(2) the savings bank is considered to be a continuation of the financial institution that was converted.

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

Sec. 92.306. PROPERTY AND OBLIGATIONS OF CONVERTED INSTITUTION. (a) The property of another financial institution that converts to a savings bank vests in the savings bank.

(b) The savings bank:

(1) holds the property in its own right to the extent the property was held by the financial institution that was converted; and

(2) on the date the conversion takes effect, succeeds to the rights, obligations, and relations of the financial institution that was converted.

(c) In this section, the property of a financial institution includes each right, title, or interest of the institution in and to property, including things in action, and each right, privilege, interest, or asset of the institution that exists or that inures to the benefit of the institution.

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

Sec. 92.307. EFFECT OF CONVERSION ON PENDING LEGAL ACTION. (a) A judicial proceeding to which the financial institution that converted is a party is not abated or discontinued by reason of the conversion and may be prosecuted to final judgment, order, or decree as if the conversion had not occurred.

(b) The savings bank may continue a judicial proceeding in its own corporate name. A judgment, order, or decree that might have been rendered for or against the financial institution that converted may be rendered for or against the savings bank.

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

Sec. 92.308. LOCAL FILING OF CONVERSION ORDER REQUIRED. The savings bank shall file a copy of the order of conversion in each county in which the financial institution that converted owned real property at the time the conversion took effect.

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

SUBCHAPTER H. REORGANIZATION, MERGER, AND CONSOLIDATION IN GENERAL

Sec. 92.351. AUTHORITY TO REORGANIZE, MERGE, OR CONSOLIDATE. (a) A savings bank may reorganize, merge, or consolidate with a corporation, another financial institution, or another entity under a plan adopted by the board.

(b) The plan must be approved:

(1) at an annual meeting or a special meeting called to consider the action by a majority of the total vote the members or shareholders are entitled to cast; and

(2) by the commissioner.

(c) A shareholder of a capital stock savings bank has the same dissenter's rights as a shareholder of a domestic corporation under the Texas Business Corporation Act.

(d) A reorganization, merger, or consolidation is subject to Section 16, Article XVI, Texas Constitution. A merger or consolidation of a domestic savings bank with a foreign savings bank is also subject to Subchapter I.

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

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.14, eff. September 1, 2005.

Sec. 92.352. NOTICE AND HEARING; CONFIDENTIALITY. (a) On receiving a plan of reorganization, merger, or consolidation, the commissioner shall give:

(1) public notice of the reorganization, merger, or consolidation in each county in which a financial institution participating in the plan has an office; and

(2) any interested person an opportunity to appear, present evidence, and be heard for or against the plan.

(b) A hearing officer designated by the commissioner shall hold the hearing.

(c) If a protest is not received on or before the date of the hearing, the commissioner or hearing officer may waive the hearing.

(d) Except as provided by Subsection (e), the provisions of Chapter 2001, Government Code, applicable to a contested case apply

to the hearing.

(e) If the commissioner designates a merger as a supervisory merger under rules adopted by the finance commission:

(1) the notice and hearing provisions of Chapter 2001, Government Code, and of this section do not apply to the application; and

(2) the application and all information relating to the application are confidential and not subject to public disclosure.

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

Sec. 92.353. DENIAL BY COMMISSIONER OF PLAN. The commissioner shall issue an order denying the plan if:

(1) the reorganization, merger, or consolidation would substantially lessen competition or restrain trade and would result in a monopoly or further a combination or conspiracy to monopolize or attempt to monopolize the financial industry in any part of the state, unless the anticompetitive effects of the reorganization, merger, or consolidation are clearly outweighed in the public interest by the probable effect of the reorganization, merger, or consolidation in meeting the convenience and needs of the community to be served;

(2) the plan is not in the best interest of the financial institutions that are parties to the plan;

(3) the experience, ability, standing, competence, trustworthiness, or integrity of the management of the financial institutions proposing the plan is such that the reorganization, merger, or consolidation would not be in the best interest of the financial institutions that are parties to the plan;

(4) after reorganization, merger, or consolidation, the surviving financial institution would not:

(A) be solvent;

(B) have adequate capital structure; or

(C) be in compliance with the law of this state;

(5) the financial institutions proposing the plan have not furnished all the information pertinent to the application that is reasonably requested by the commissioner; or

(6) the financial institutions proposing the plan are not acting in good faith.

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

Sec. 92.354. ALTERNATIVE OR ADDITIONAL PROCEDURES. If the surviving financial institution is an entity other than a savings bank, the commissioner may accept, in addition to or instead of the requirements of this subchapter, the procedures and decision of the appropriate banking agency with jurisdiction over the surviving financial institution.

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

Sec. 92.355. CONTINUATION OF CORPORATE EXISTENCE; HOME OFFICE OF SURVIVING ENTITY. (a) An entity that results from a reorganization, merger, or consolidation as provided by Section 92.351 has the property rights and obligations of the reorganized, merged, or consolidated entity in the same manner as an entity that results from the conversion of a savings bank under this chapter has the property rights and obligations of the savings bank.

(b) The home office of the surviving financial institution is the home office of the financial institution in the merger that has the largest assets unless the commissioner approves a different home office.

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

SUBCHAPTER I. ADDITIONAL PROVISIONS FOR MERGER OR CONSOLIDATION OF FOREIGN AND DOMESTIC SAVINGS BANKS

Sec. 92.401. APPLICABILITY OF SUBCHAPTER. (a) Except as provided by Section 92.407, this subchapter applies only to the merger or consolidation of a domestic savings bank with a foreign savings bank.

(b) The requirements of and authority and duties provided by this subchapter are in addition to those provided by Subchapter H.

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

Sec. 92.402. ADOPTION OF MERGER OR CONSOLIDATION PLAN. The

board of the foreign savings bank must adopt the merger or consolidation plan.

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

Sec. 92.403. NOTICE AND HEARING; CONFIDENTIALITY. If the commissioner considers the domestic savings bank to be in an unsafe condition:

(1) the provisions of Chapter 2001, Government Code, applicable to a contested case do not apply to the application; and

(2) the application and all information related to the application are confidential and not subject to public disclosure.

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

Sec. 92.404. DENIAL BY COMMISSIONER OF APPLICATION. If the surviving savings bank is a foreign savings bank, the commissioner shall deny the application if:

(1) the law of the state in which the foreign savings bank has its principal place of business does not permit a savings bank of that state to merge or consolidate with a domestic savings bank if the surviving savings bank is a domestic savings bank; or

(2) the foreign savings bank is controlled by a holding company that has its principal place of business in a state whose law does not permit a savings bank of that state to merge or consolidate with a domestic savings bank if the surviving savings bank is a domestic savings bank.

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

Sec. 92.405. APPROVAL BY COMMISSIONER OF PLAN. (a) If the commissioner approves the plan of merger or consolidation, the commissioner shall issue an order approving the merger or consolidation.

(b) If the surviving savings bank is a foreign savings bank, the commissioner shall issue and deliver to the surviving savings bank a certificate of authority to do business as a savings bank in this state for a period that expires January 31 of the next calendar

year.

(c) A surviving savings bank that is a domestic savings bank shall operate under:

(1) the articles and bylaws of the merging or consolidating domestic savings bank; and

(2) the law applicable to a domestic savings bank.

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

Sec. 92.406. ENFORCEMENT OF CONDITION, RESTRICTION, OR REQUIREMENT ON SURVIVING FOREIGN SAVINGS BANK. If the surviving savings bank is a foreign savings bank, the commissioner may enforce a condition, restriction, or requirement on the surviving savings bank that could have been enforced by the state in which the foreign savings bank has its principal place of business if the merger or consolidation had occurred in that state and the surviving savings bank were a domestic savings bank.

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

Sec. 92.407. MERGER OF FOREIGN SAVINGS AND LOAN ASSOCIATION. (a) A foreign savings and loan association may merge with a domestic savings bank under this subchapter as if the foreign savings and loan association were a foreign savings bank.

(b) If the surviving institution is the foreign savings and loan association, the commissioner shall issue and deliver to the foreign savings and loan association a certificate of authority under Section 92.405 to do business in this state.

(c) In this section, "foreign savings and loan association" means a savings and loan association:

(1) whose principal office is located outside this state; and

(2) that was organized under the law of another state or the law of the United States.

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

SUBCHAPTER J. MERGER OF SUBSIDIARY CORPORATION

Sec. 92.451. AUTHORITY TO MERGE. One or more corporations organized under the law of this state may merge into a savings bank that owns all the corporations' capital stock if:

(1) the board of the savings bank and each corporation by majority vote adopt a plan of merger; and

(2) the secretary of state and the commissioner approve the merger.

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

Sec. 92.452. ARTICLES OF MERGER. (a) The articles of merger must:

(1) be executed by the president or vice president and a secretary or assistant secretary of the savings bank and each corporation; and

(2) include:

(A) the name of the savings bank and each corporation;

(B) a copy of the resolution of the savings bank and each corporation adopting the plan of merger;

(C) a statement of the number of shares of each class issued or authorized by each corporation;

(D) a statement that all capital stock of each corporation is owned by the savings bank; and

(E) a statement incorporating the provisions of Section 92.454(b).

(b) The original and a copy of the articles of merger must be submitted to the secretary of state and the commissioner.

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

Sec. 92.453. APPROVAL OF MERGER. (a) The secretary of state shall approve the articles of merger if the secretary of state determines that:

(1) the articles of merger comply with applicable law; and

(2) all fees and franchise taxes due from each corporation have been paid.

(b) The commissioner shall approve the articles of merger if the commissioner determines that:

(1) the articles of merger comply with applicable law; and

(2) the merger is in the best interest of the savings bank.

(c) On approval of the articles of merger, each approving officer shall:

(1) endorse on the original and a copy of the articles of merger the word "filed" and the date of the approval;

(2) file the original and a copy of the articles of merger in the records of the officer's office; and

(3) issue and deliver to the savings bank a certificate of merger with an attached copy of the articles of merger.

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

Sec. 92.454. EFFECT OF MERGER. (a) A merger takes effect on the date the last required certificate of merger is issued.

(b) After the merger takes effect:

(1) a corporation that was merged ceases to exist;

(2) the savings bank assumes the rights and obligations of the corporation and owns the property of the corporation; and

(3) the savings bank's articles of incorporation are considered amended to the extent that a change is stated in the plan of merger.

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

Sec. 92.455. INAPPLICABILITY OF SUBCHAPTER H. Subchapter H does not apply to a merger under this subchapter.

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

SUBCHAPTER K. VOLUNTARY LIQUIDATION

Sec. 92.501. RESOLUTION TO LIQUIDATE AND DISSOLVE. (a) A savings bank may liquidate and dissolve if:

(1) at an annual meeting or a special meeting called for the purpose, the members or shareholders by majority vote adopt a resolution to liquidate and dissolve; and

(2) a copy of the resolution certified by the president and secretary of the savings bank and an itemized statement of the savings bank's assets and liabilities sworn to by a majority of its

board is filed with and approved by the commissioner.

(b) After the commissioner approves the resolution:

(1) the savings bank may not accept additional deposit accounts or additions to deposit accounts or make additional loans; and

(2) the savings bank's income and receipts in excess of actual expenses of liquidation shall be applied to the discharge of its liabilities.

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

Sec. 92.502. DISTRIBUTION OF ASSETS. (a) The board, under the commissioner's supervision and in accordance with the approved liquidation plan, shall liquidate the affairs of the savings bank and reduce its assets to cash for the purpose of paying, satisfying, and discharging all existing liabilities and obligations of the savings bank, including the full withdrawal value of all deposit accounts.

(b) The board shall distribute any remaining balance to the members or shareholders of record on the date the savings bank adopted the resolution to liquidate, according to their liquidation rights.

(c) The board shall pay from the savings bank's assets all expenses incurred by the commissioner or any of the commissioner's representatives during the course of liquidation.

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

Sec. 92.503. FINAL REPORT AND ACCOUNTING. (a) On completion of the liquidation, the board shall file with the commissioner a final report and accounting of the liquidation.

(b) The commissioner's approval of the report is a complete and final discharge of the board and each member in connection with the liquidation of the savings bank.

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

SUBCHAPTER L. CHANGE OF CONTROL OF SAVINGS BANK

Sec. 92.551. INAPPLICABILITY OF SUBCHAPTER. This subchapter

does not apply to a conversion, reorganization, merger, consolidation, or voluntary liquidation under Subchapter F, G, H, J, or K.

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

Sec. 92.552. EFFECT OF SUBCHAPTER ON OTHER LAW. This subchapter does not:

(1) excuse or diminish notice requirements prescribed by this subtitle; or

(2) prevent the commissioner from investigating, commenting on, or seeking to enjoin or set aside a transfer of voting securities of a savings bank that the commissioner considers to be against the public interest, regardless of whether the transfer is subject to this subchapter.

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

Sec. 92.553. APPLICATION FOR CHANGE OF CONTROL. (a) Control of a savings bank may change only if an application for approval of the change of control is filed with and approved by the commissioner.

(b) The application must be:

(1) on a form prescribed by the commissioner;

(2) sworn to; and

(3) accompanied by the filing fee.

(c) Unless the commissioner expressly waives a requirement of this subsection, the application must contain:

(1) the identity, history, business background and experience, and financial condition of each person by whom or on whose behalf the acquisition is to be made, including a description of:

(A) the managerial resources and future prospects of each acquiring party; and

(B) any material pending legal or administrative proceedings to which the applicant is a party;

(2) the terms of any proposed acquisition and the manner in which the acquisition is to be made;

(3) the identity, source, and amount of the money or other consideration used or to be used in making the acquisition and, if

any part of the money or other consideration was or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and arrangements, agreements, or understandings with those parties;

(4) any plan or proposal of an acquiring party to liquidate the savings bank, sell the savings bank's assets, merge the savings bank with another company, or make other major changes in the savings bank's business, corporate structure, or management;

(5) the terms of any offer, invitation, agreement, or arrangement under which a voting security of the savings bank will be acquired and any contract affecting that security or its financing after it is acquired;

(6) information establishing that the requirements under Section 92.556(a) are satisfied; and

(7) other information that:

(A) the finance commission by rule requires; or

(B) the commissioner orders to be included in a particular application.

(d) The commissioner may require each member of a group proposing to acquire voting securities of a savings bank under this subchapter to provide the information required by the commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 48, eff. Sept. 1, 2001.

Sec. 92.554. NOTICE OF APPLICATION. (a) On receipt of an application, the commissioner shall submit to the Texas Register for publication in the next issue after the date the application is received:

(1) notice of the application;

(2) the date the application was filed; and

(3) the identity of each party to the application.

(b) The commissioner may waive the publication requirement of this section or may permit delay of publication if the commissioner determines that the waiver or delay is in the public interest.

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

Sec. 92.555. CONFIDENTIALITY. (a) Except as provided by this

section, information the commissioner obtains under this subchapter that is not published is confidential and may not be disclosed by the commissioner or an officer or employee of the Department of Savings and Mortgage Lending.

(b) Information that would have been contained in a published notice waived by the commissioner under Section 92.554 becomes public information under Chapter 552, Government Code, on the 34th day after the date the application is filed.

(c) On request, the commissioner may disclose the identity of an actual or beneficial owner of a savings bank incorporated under this subtitle.

(d) The commissioner may disclose information to an appropriate banking agency or another appropriate government department, agency, or instrumentality of this state, another state, or the United States if the commissioner considers the disclosure necessary or proper to enforce the laws of any state or the United States and in the best interest of the public.

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

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.038, eff. September 1, 2007.

Sec. 92.556. DENIAL OF APPLICATION. (a) The commissioner by order shall deny an application unless the applicant establishes that:

(1) the acquisition would not:

(A) substantially lessen competition;

(B) restrain trade in a manner that would result in a monopoly; or

(C) further a combination or conspiracy to monopolize or attempt to monopolize the financial industry in any part of this state;

(2) the financial condition of an acquiring party does not jeopardize the financial stability of the savings bank being acquired;

(3) the plan or proposal to liquidate or sell the savings bank or any assets is in the best interest of the savings bank;

(4) the experience, ability, standing, competence,

trustworthiness, and integrity of the applicant are sufficient to ensure that the acquisition is in the best interest of the savings bank; and

(5) the savings bank would be solvent, have adequate capital structure, and be in compliance with the law of this state.

(b) The commissioner is not required to deny an application that does not comply with Subsection (a)(1) if the commissioner determines that:

(1) the anticompetitive effects of the acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served; and

(2) the acquisition does not violate a law of this state or the United States.

(c) Notwithstanding Subsections (a) and (b), the commissioner shall issue an order denying an application if the commissioner determines that the applicant:

(1) has not furnished all information pertinent to the application reasonably requested by the commissioner; or

(2) is not acting in good faith.

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

Sec. 92.557. NOTICE OF INTENT TO DENY; HEARING. (a) Not later than the 60th day after the date the application is filed, the commissioner shall:

(1) approve the application without a hearing; or

(2) notify the transferee in writing that the commissioner intends to deny the application and state the grounds for denial.

(b) Not later than the 30th day after the date notice of intent to deny is mailed to the transferee, the transferee may file a written request for a hearing on the application.

(c) The commissioner may immediately enter a final and nonappealable order denying the application if a hearing is not timely requested.

(d) If a hearing is to be held, the commissioner shall issue public notice of the application and shall give any interested person an opportunity to appear, present evidence, and be heard for or against the application. A hearing officer designated by the

commissioner shall hold the hearing.

(e) After the hearing, the commissioner shall enter a final order approving or denying the application.

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

Sec. 92.558. JUDICIAL REVIEW. (a) An applicant may appeal a final order with the commissioner as defendant.

(b) A party to the action may appeal the court's decision. The appeal is immediately returnable to the appellate court and has precedence over any cause of a different character pending in that court.

(c) The commissioner is not required to give an appeal bond in a cause arising under this section.

(d) Filing an appeal under this section does not stay an order of the commissioner.

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

Sec. 92.559. UNAUTHORIZED CHANGE OF CONTROL. If it appears that a change in control may have occurred without prior approval, the commissioner may call a hearing to determine whether:

(1) a change in control has occurred or an unauthorized person without any apparent ownership interest in the savings bank, acting alone or with others, effectively has indirect controlling or dominating influence over the management or policies of the savings bank; and

(2) an appropriate supervisory order should be issued, including an order requiring divestiture of unapproved or indirect control.

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

Sec. 92.560. INJUNCTION. (a) The attorney general on behalf of the commissioner may apply for equitable relief as the case may require, including an order prohibiting the violation, if it appears to the commissioner that a person has violated or is about to violate this subchapter or a rule of the finance commission or order of the

commissioner adopted under this subchapter.

(b) The suit must be brought in a district court of Travis County.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 49, eff. Sept. 1, 2001.

Sec. 92.561. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally makes a materially false or misleading statement to the commissioner with respect to the information required by this subchapter.

(b) An offense under this section is a Class A misdemeanor.

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

SUBCHAPTER M. LIMITED SAVINGS BANK

Sec. 92.601. APPLICATION TO ORGANIZE. (a) Five or more adult residents of this state may apply to organize a savings bank as a limited savings bank by submitting to the commissioner:

(1) an application to organize a limited savings bank that is:

(A) in a form specified by the commissioner; and

(B) signed by each organizer; and

(2) the filing fee.

(b) An application must contain:

(1) two copies of the limited savings bank's certificate of formation containing:

(A) the name of the savings bank;

(B) the location of the principal office;

(C) the names and addresses of the initial managers; and

(D) to the extent not inconsistent with this subtitle, the proper business of a savings bank, or a rule adopted by the finance commission related to savings banks, other provisions included in:

(i) the articles of organization of a limited liability company organized under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes) if the limited savings bank was organized before January 1, 2006; or

(ii) the certificate of formation of a limited liability company organized under Chapter 101, Business Organizations Code, if:

(a) the limited savings bank was organized on or after January 1, 2006; or

(b) the organizers elect to include those provisions, if the limited savings bank was organized before January 1, 2006;

(2) two copies of the savings bank's company agreement;

(3) data sufficiently detailed and comprehensive in nature to enable the commissioner to make findings under Section 92.058, including statements, exhibits, and maps;

(4) financial information about each applicant, organizer, manager, officer, or member that the finance commission requires by rule; and

(5) other information relating to the savings bank and its operation that the finance commission requires by rule.

(c) Financial information described by Subsection (b) is confidential and not subject to public disclosure unless the commissioner finds that disclosure is necessary and in the public interest.

(d) The statement of fact must be signed and sworn to.

(e) Subchapter B applies to the organization of a limited savings bank except to the extent inconsistent with this section.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.15, eff. September 1, 2005.

Sec. 92.602. LIABILITY OF MEMBERS AND MANAGERS. A member, transferee of a member, or manager of a limited savings bank is not liable for a debt, obligation, or liability of the limited savings bank, including a debt, obligation, or liability under a judgment, decree, or order of a court. A member or a manager of a limited savings bank is not a proper party to a proceeding by or against a limited savings bank unless the object of the proceeding is to enforce a member's or manager's right against or liability to a limited savings bank.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.15, eff. September 1, 2005.

Sec. 92.603. CONTRIBUTIONS. A member of a limited savings bank is obligated to make contributions as required in the company agreement.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.15, eff. September 1, 2005.

Sec. 92.604. MANAGERS OF LIMITED SAVINGS BANK. (a) Management of a limited savings bank shall be exercised by a board of managers consisting of not fewer than five or more than 21 persons.

(b) A manager must meet the qualifications for a director under Section 92.153.

(c) The governing documents of a limited savings bank may use "director" instead of "manager" and "board" instead of "board of managers."

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.15, eff. September 1, 2005.

Sec. 92.605. WITHDRAWAL OR REDUCTION OF MEMBER'S CONTRIBUTION. (a) A member may not receive from a limited savings bank any part of the member's contribution except as provided by rule adopted by the finance commission regulating withdrawal or reduction.

(b) A member may not receive any part of the member's contribution if, after the withdrawal or reduction, the capital of the savings bank would be reduced to less than the minimum capital established for the incorporation or operation of a savings bank by this subtitle or a rule adopted under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.15, eff. September 1, 2005.

Sec. 92.606. COMPANY AGREEMENT OF LIMITED SAVINGS BANK. (a) A limited savings bank shall adopt a company agreement that contains provisions regulating the management and organization of the limited savings bank. The agreement is subject to the approval of the

commissioner and must contain provisions the finance commission may require by a rule adopted under this subchapter.

(b) At the option of the limited savings bank, the term "bylaws" may be substituted for the term "company agreement."

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.15, eff. September 1, 2005.

Sec. 92.607. DISSOLUTION. (a) A limited savings bank organized under this subchapter is dissolved on:

(1) the expiration of the period fixed for the duration of the limited savings bank; or

(2) the occurrence of events specified in the certificate of formation or company agreement to cause dissolution.

(b) A dissolution under this section is considered a resolution to close the savings bank under Section 96.251.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.15, eff. September 1, 2005.

Sec. 92.608. ALLOCATION OF PROFITS AND LOSSES. The profits and losses of a limited savings bank may be allocated among the members and among classes of members as provided by the company agreement. Without the prior written approval of the commissioner to use a different allocation method, the profits and losses must be allocated according to the relative interests of the members in the limited savings bank.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.15, eff. September 1, 2005.

Sec. 92.609. DISTRIBUTIONS. Subject to rules adopted by the finance commission, distributions of cash or other assets of a limited savings bank may be made to the members as provided by the company agreement. Without the prior written approval of the commissioner to use a different distribution method, distributions must be made to the members according to the relative interests of the members as reflected in the governing documents of the limited

savings bank filed with and approved by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.15, eff. September 1, 2005.

Sec. 92.610. AMENDMENT OF GOVERNING DOCUMENTS. (a) A limited savings bank may amend its certificate of formation by a majority vote of the members cast at any annual meeting or a special meeting called for that purpose unless the certificate of formation requires a higher percentage.

(b) If provided in the governing documents, the company agreement of a limited savings bank may be amended by a majority vote of the board of managers unless the governing documents require a higher percentage. In the absence of an express provision in the governing documents, the company agreement may be amended by a majority vote of the members cast at any annual meeting or special meeting called for that purpose.

(c) An amendment to the governing documents may not take effect before it is filed with and approved by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.15, eff. September 1, 2005.

Sec. 92.611. APPLICATION OF OTHER PROVISIONS TO LIMITED SAVINGS BANKS; MISCELLANEOUS PROVISIONS. (a) This subtitle applies to a savings bank organized as a limited savings bank under this subchapter. In the event of a conflict between this subchapter and a provision of this subtitle, this subchapter controls unless the finance commission by rule provides that this subtitle controls.

(b) For purposes of provisions of this chapter other than this subchapter, as the context requires:

(1) a manager is considered to be a director and the board of managers is considered to be the board of directors;

(2) a member is considered to be a shareholder; and

(3) a distribution is considered to be a dividend.

(c) A reference in a statute or rule to a savings bank includes a savings bank organized as a limited savings bank unless the context clearly requires that a limited savings bank is not included within the term or the provision contains express language excluding a

limited savings bank.

(d) In this subchapter, "governing document" means a limited savings bank's certificate of formation or company agreement.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.15, eff. September 1, 2005.

CHAPTER 93. GENERAL POWERS

Sec. 93.001. GENERAL CORPORATE POWERS. (a) A savings bank has the powers authorized by this subtitle and any other right, privilege, or power incidental to or reasonably necessary to accomplish the purposes of the savings bank.

(b) With the commissioner's prior approval, a savings bank may engage in business as a savings bank in any state of the United States to the extent permitted by the laws of that state, either directly or through the ownership of a savings bank incorporated under the laws of another state.

(c) A savings bank may:

(1) sue and be sued in its corporate name;

(2) adopt and operate a reasonable bonus plan, profit-sharing plan, stock bonus plan, stock option plan, pension plan, or similar incentive plan for its directors, officers, or employees, subject to any limitations under this subtitle or rules adopted under this subtitle;

(3) make reasonable donations for the public welfare or for a charitable, scientific, religious, or educational purpose;

(4) pledge its assets to secure deposits of public money of the United States, if required by the United States, including revenue and money the deposit of which is subject to control or regulation of the United States;

(5) pledge its assets to secure deposits of public money of any state or of a political corporation or political subdivision of any state or of any other entity that serves a public purpose according to rules adopted by the finance commission;

(6) become a member of or deal with any corporation or agency of the United States or this state, to the extent that the corporation or agency assists in furthering the purposes or powers of savings banks, and for that purpose may purchase stock or securities of the corporation or agency or deposit money with the corporation or

agency and may comply with any other condition of membership credit;

(7) become a member of a federal home loan bank or the Federal Reserve System;

(8) hold title to any assets acquired because of the collection or liquidation of a loan, investment, or discount and may administer those assets as necessary;

(9) receive and repay any deposit or account in accordance with this subtitle and rules of the finance commission; and

(10) lend and invest its money as authorized by this subtitle and rules of the finance commission.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 50, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.16, eff. September 1, 2005.

Sec. 93.002. ENLARGEMENT OF POWERS. (a) The finance commission by rule may expand the powers of savings banks to accommodate or take advantage of changing technology and to enable domestic savings banks to respond to the needs of and convenience demanded by consumers and businesses through on-premises or off-premises operations.

(b) The finance commission may not authorize a domestic savings bank to offer a financial service prohibited to a domestic savings bank by a law of this state other than this subtitle.

(c) In adopting a rule under this section, the finance commission shall consider the need to:

(1) promote a stable environment for financial institutions;

(2) provide the public with convenient, safe, and competitive financial services; and

(3) allow for economic development in the state.

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

Sec. 93.003. POWERS OF FEDERAL SAVINGS BANK. A federal savings bank and its members have all of the powers, privileges, benefits, immunities, and exemptions that are provided by the law of this state

for a savings bank and the savings bank's members.

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

Sec. 93.004. POWER TO BORROW. (a) A savings bank may borrow and give security, subject to rules adopted by the finance commission.

(b) A savings bank at any time through action of its board may issue a capital note, debenture, or other capital obligation authorized by rules adopted by the finance commission.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 51, eff. Sept. 1, 2001.

Sec. 93.005. FISCAL AGENT. (a) A savings bank may act as fiscal agent of the United States. A savings bank designated as fiscal agent of the United States by the secretary of the treasury shall act under regulations as required by the secretary and may act as fiscal agent for an instrumentality of the United States.

(b) A savings bank may act as fiscal agent of this state or of a governmental subdivision or instrumentality of this state.

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

Sec. 93.006. POWER TO ACT UNDER CERTAIN FEDERAL RETIREMENT PLANS. A savings bank or a federal savings bank, to the extent that its charter and applicable federal regulations permit, may:

(1) exercise any power necessary to qualify as a trustee or custodian for a retirement plan permitted or recognized by federal law; and

(2) invest money the bank holds as trustee or custodian under Subdivision (1) in the bank's accounts if the plan does not prohibit that investment.

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

Sec. 93.007. TRUST POWERS. (a) A savings bank may exercise

trust powers only with the commissioner's prior written approval.

(b) The commissioner may approve the exercise of trust powers only after finding that the applicant's savings bank:

(1) is complying with applicable regulatory capital requirements;

(2) is well managed; and

(3) has earnings, resources, and managerial talent adequate to maintain a trust department.

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

Sec. 93.008. POWERS RELATIVE TO OTHER FINANCIAL INSTITUTIONS. (a) Subject to limitations prescribed by rule of the finance commission, a savings bank may make a loan or investment or engage in an activity permitted:

(1) under state law for a bank or savings and loan association; or

(2) under federal law for a federal savings and loan association, savings bank, or national bank if the financial institution's principal office is located in this state.

(b) Notwithstanding any other law, a savings bank organized and chartered under this chapter may perform an act, own property, or offer a product or service that is at the time permissible within the United States for a depository institution organized under federal law or the law of this state or another state if the commissioner approves the exercise of the power as provided by this section, subject to the same limitations and restrictions applicable to the other depository institution by pertinent law, except to the extent the limitations and restrictions are modified by rules adopted under Subsection (e). This section may not be used to alter or negate the application of the laws of this state with respect to:

(1) establishment and maintenance of a branch in this state or another state or country;

(2) permissible interest rates and loan fees chargeable in this state;

(3) fiduciary duties owed to a client or customer by the bank in its capacity as fiduciary in this state;

(4) consumer protection laws applicable to transactions in this state; or

(5) compliance with the qualified thrift assets test contained in Section 92.204.

(c) A savings bank that intends to exercise a power, directly or through a subsidiary, granted by Subsection (b) that is not otherwise authorized for savings banks under the statutes of this state shall submit a letter to the commissioner describing in detail the power that the savings bank proposes to exercise and the specific authority of another depository institution to exercise the power. The savings bank shall attach copies, if available, of relevant law, regulations, and interpretive letters. The commissioner may deny the bank from exercising the power if the commissioner finds that:

(1) specific authority does not exist for another depository institution to exercise the proposed power;

(2) if the savings bank is insured by the Federal Deposit Insurance Corporation, the savings bank is prohibited from exercising the power under Section 24, Federal Deposit Insurance Act (12 U.S.C. Section 1831a), and related regulations;

(3) the exercise of the power by the bank would adversely affect the safety and soundness of the bank; or

(4) at the time the application is made, the savings bank is not well capitalized and well managed.

(d) A savings bank that is denied the requested power by the commissioner under this section may appeal. The notice of appeal must be in writing and must be received by the commissioner not later than the 30th day after the date of the denial. An appeal under this section is a contested case under Chapter 2001, Government Code.

(e) To effectuate this section, the finance commission may adopt rules implementing the method or manner in which a savings bank exercises specific powers granted under this section, including rules regarding the exercise of a power that would be prohibited to savings banks under state law but for this section.

(f) The exercise of a power by a savings bank in compliance with and in the manner authorized by this section is not a violation of any statute of this state.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 52, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.17, eff. September 1, 2005.

Sec. 93.009. RIGHT TO ACT TO AVOID LOSS. (a) This subtitle does not deny a savings bank the right to invest its money, operate a business, manage or deal in property, or take other action during any period that is reasonably necessary to avoid loss on a loan or on an investment made or obligation created in good faith in the usual course of the bank's business, as authorized by this subtitle or a rule adopted under this subtitle.

(b) This subtitle does not prohibit a savings bank from:

(1) developing or building on land it has acquired under this section; or

(2) completing the construction of a building under a construction loan contract in which the borrower has not complied with the contract.

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

Sec. 93.010. CLOSING PLACE OF BUSINESS. A savings bank may close its place of business at any time its board of directors determines.

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

Sec. 93.011. EMERGENCY CLOSING. (a) If the officers of a savings bank determine that an emergency that affects or may affect the savings bank's offices or operations exists or is impending, the officers, as reasonable, may determine:

(1) not to conduct the involved operations or open the offices on any business or banking day; or

(2) if the savings bank is open, to close the offices or the involved operations for the duration of the emergency.

(b) Subject to Subsection (c), a closed office or operation may remain closed until the officers determine that the emergency has ended and for any additional time reasonably required to reopen.

(c) A savings bank that closes an office or operation under this section shall notify the commissioner of its action by any means available and as promptly as conditions permit. An office or operation may not be closed for more than 48 consecutive hours,

excluding other legal holidays, without the commissioner's approval.

(d) In this section, "emergency" means a condition or occurrence that physically interferes with the conduct of normal business at the offices of a savings bank or of a particular savings bank operation or that poses an imminent or existing threat to the safety or security of persons, property, or both. The term includes a condition or occurrence arising from:

(1) fire, flood, earthquake, hurricane, tornado, wind, rain, or snowstorm;

(2) labor dispute and strike;

(3) power failure;

(4) transportation failure;

(5) interruption of communication facilities;

(6) shortage of fuel, housing, food, transportation, or labor;

(7) robbery or burglary;

(8) actual or threatened enemy attack;

(9) epidemic or other catastrophe;

(10) riot or civil commotion; or

(11) any other actual or threatened unlawful or violent act.

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

Sec. 93.012. EFFECT OF CLOSING. (a) A day on which a savings bank or one or more of its operations are closed under Section 93.011 during all or part of its normal business hours is considered to be a legal holiday to the extent the savings bank suspends operations.

(b) A savings bank or a director, officer, or employee of a savings bank does not incur liability or loss of rights from a closing authorized by Section 93.011.

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

CHAPTER 94. LOANS AND INVESTMENTS

SUBCHAPTER A. LIMITATIONS ON LOANS

Sec. 94.001. LOANS TO ONE BORROWER. (a) The finance commission by rule may limit loans to one borrower. Those limits may not be less restrictive than the limits imposed on savings

associations under Section 5(u), Home Owners' Loan Act (12 U.S.C. Section 1464(u)).

(b) A savings bank may not make loans to one borrower to a greater extent than:

(1) permitted by rule adopted under Subsection (a); or

(2) a savings association is permitted under Section 5(u), Home Owners' Loan Act (12 U.S.C. Section 1464(u)).

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 53, eff. Sept. 1, 2001.

Sec. 94.002. COMMERCIAL LOANS. (a) Subject to rules adopted by the finance commission, a savings bank may lend or invest not more than 40 percent of the savings bank's total assets in commercial loans.

(b) In this section, "commercial loan" means a loan that:

(1) is for business, commercial, corporate, or agricultural purposes;

(2) is not a real property loan; and

(3) is not a qualified thrift asset under Section 92.204.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 54, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 10, eff. September 1, 2013.

SUBCHAPTER B. LOAN EXPENSES

Sec. 94.051. BORROWER PAYMENT OF LOAN EXPENSES. Subject to Section 94.052, a savings bank may require a borrower to pay all reasonable expenses incurred in connection with making, closing, disbursing, extending, readjusting, or renewing a loan.

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

Sec. 94.052. CONSUMER LOANS. In the case of a consumer loan:

(1) a savings bank may charge a borrower the reasonable value of services rendered in connection with making the loan; and

(2) an expense charged a borrower must be:

(A) necessary and proper for the protection of the lender; and

(B) actually incurred in connection with making the loan.

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

Sec. 94.053. COLLECTION OF LOAN EXPENSES. An expense payment authorized by this subchapter may be:

(1) collected by the savings bank from the borrower and:

(A) retained by the savings bank; or

(B) paid to a person rendering a service for which a charge was made, including an officer, director, or employee of the savings bank rendering the service; or

(2) paid directly by the borrower to the person rendering the service.

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

Sec. 94.054. CHARACTER OF LOAN EXPENSE PAYMENTS. An expense payment authorized by this subchapter is not interest or compensation charged by a savings bank for the loan of money.

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

SUBCHAPTER C. LOAN PAYMENTS

Sec. 94.101. PENALTY FOR PREPAYMENT OR LATE PAYMENT. A savings bank may charge a penalty for a prepayment of or late payment on a loan.

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

Sec. 94.102. APPLICATION OF PREPAYMENTS TO LOAN INSTALLMENTS. Unless otherwise agreed in writing, a savings bank shall apply:

(1) a prepayment of principal to the final installment of the obligation until the final installment is fully paid; and

(2) additional prepayments to installments in the inverse order of their maturity.

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

SUBCHAPTER D. CHARGES RELATING TO REAL PROPERTY LOANS

Sec. 94.151. ADVANCES PAID BY SAVINGS BANK. (a) A savings bank may pay taxes, assessments, insurance premiums, and similar charges for the protection of the savings bank's interest in property that secures a real property loan of the savings bank.

(b) A payment under Subsection (a) is an advance, and the savings bank may:

(1) carry the payment on the savings bank's books as an asset of the savings bank for which the savings bank may charge interest; or

(2) add the payment to the unpaid balance of the loan to which it applies as of the first day of the month in which the payment is made.

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

Sec. 94.152. ADVANCES ARE LIEN ON PROPERTY. A payment under Section 94.151 is a lien against the real property that secures the loan for which it is made.

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

Sec. 94.153. PAYMENT OF ESTIMATED CHARGES BY BORROWER. (a) To enable the savings bank to pay charges as they become due, a savings bank may require a borrower to pay monthly in advance, in addition to interest and principal, an amount equal to one-twelfth of the estimated annual taxes, assessments, insurance premiums, and other charges on the real property that secures a loan.

(b) A savings bank may increase or decrease the amount of the loan payment as necessary to meet the charges.

(c) A savings bank may:

(1) carry the payments in trust in an account; or

(2) credit the payments to the indebtedness and advance the

money for charges as the charges become due.

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

Sec. 94.154. RECORD OF CHARGES. A savings bank shall keep a record of the status of taxes, assessments, insurance premiums, and other charges on real property that secures the savings bank's loans.

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

SUBCHAPTER F. INVESTMENT IN EQUITY SECURITIES

Sec. 94.251. LIMITATIONS ON INVESTMENT IN EQUITY SECURITIES. (a) A savings bank or a subsidiary may not invest in an equity security unless the security qualifies as an investment grade security under rules adopted by the finance commission.

(b) A savings bank may not invest in an equity security unless the security is an eligible investment for a federal savings and loan association.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 56, eff. Sept. 1, 2001.

Sec. 94.252. INAPPLICABILITY OF LIMITATIONS. The limitations under Section 94.251 do not apply to an equity security issued by:

(1) a United States government-sponsored corporation, including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association; or

(2) a service corporation, an operating subsidiary, or a finance subsidiary of the savings bank.

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

Sec. 94.253. RULES. The finance commission may adopt rules necessary to implement this subchapter, including rules relating to eligible investment criteria, investment diversification, and resource management requirements.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 57, eff. Sept. 1, 2001.

SUBCHAPTER G. INVESTMENT IN SUBSIDIARIES

Sec. 94.301. AUTHORIZATION. With the prior consent of the commissioner and subject to rules adopted by the finance commission, a savings bank may invest in a subsidiary corporation created under general corporation law.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 58, eff. Sept. 1, 2001.

Sec. 94.302. LIMITATION ON INVESTMENT IN SUBSIDIARIES. (a) A savings bank may not invest in a subsidiary corporation if the investment would cause the savings bank's aggregate investments in subsidiaries to exceed an amount equal to 10 percent of the savings bank's total assets.

(b) For the purposes of Subsection (a), a savings bank's aggregate investment in subsidiaries does not include amounts invested in a subsidiary corporation the activities of which are limited to activities that could be conducted directly by the parent savings bank.

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

Sec. 94.303. REGULATION AND EXAMINATION OF SUBSIDIARY. (a) The commissioner may regulate and examine a subsidiary corporation in which a savings bank invests under Section 94.301.

(b) The subsidiary corporation shall pay the cost of the regulation and examination.

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

Sec. 94.304. RULES. The finance commission shall adopt rules on permitted activities of a subsidiary corporation in which a savings bank invests under Section 94.301.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 59, eff. Sept. 1, 2001.

SUBCHAPTER H. PROPERTY OF SAVINGS BANK

Sec. 94.351. INVESTMENT IN BANKING PREMISES. Without prior approval of the commissioner, a savings bank may invest not more than an amount equal to the savings bank's regulatory capital in real property, including a building or related facility, a parking facility, or leasehold improvements for a rented facility, for use by the savings bank as its banking premises.

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

Sec. 94.352. FORM OF SAVINGS BANK FACILITY. The finance commission by rule adopted under Section 93.002 may approve a new form of savings bank facility or authorize the commissioner to approve a new form of savings bank facility if the commissioner does not have a significant supervisory or regulatory concern regarding the proposed facility.

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

Sec. 94.353. RECORD OF CHARGES ON REAL AND PERSONAL PROPERTY. A savings bank shall keep a record of the status of taxes, assessments, insurance premiums, and other charges on all real and personal property owned by the savings bank.

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

CHAPTER 95. DEPOSIT ACCOUNTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 95.001. DEPOSITS. (a) A savings bank may receive a deposit of money.

(b) Money deposited in a savings bank may be withdrawn or paid on a check of the deposit account holder.

(c) Unless the deposit contract expressly provides otherwise, a deposit must be payable on demand without notice.

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

Sec. 95.002. LIMITATIONS ON ACCOUNTS. The board may limit the number and value of deposit accounts the savings bank may accept.

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

Sec. 95.003. INVESTMENT IN ACCOUNTS. (a) Any person may be the holder of a deposit account.

(b) An investment in a deposit account may be made only in cash.

(c) A person may invest in a deposit account in the person's own right or in a trust or other fiduciary capacity.

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

Sec. 95.004. DEPOSIT CONTRACT. (a) Each holder of a deposit account must execute a deposit contract. The contract must specify:

(1) any special terms applicable to the account; and

(2) the conditions on which withdrawals may be made.

(b) The savings bank shall hold the deposit contract in the records pertaining to the account.

(c) A deposit contract pertaining to a deposit account of a public or governmental entity must provide that the holder of the account may not become a member of the savings bank.

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

Sec. 95.005. ACCOUNT OWNERSHIP. Unless a savings bank acknowledges in writing a pledge of a deposit account, the savings bank may treat the holder of record of the account as the owner of the account for all purposes and is unaffected by notice to the contrary.

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

Sec. 95.006. TRANSFER OF ACCOUNT. (a) A deposit account may be transferred on the books of the savings bank only on presentation to the savings bank of:

(1) evidence of transfer satisfactory to the savings bank; and

(2) an application for transfer by the transferee.

(b) A transferee accepts an account subject to the terms of the:

(1) deposit contract; and

(2) savings bank's charter and bylaws.

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

Sec. 95.007. INTEREST OR DIVIDENDS PAID ON ACCOUNTS. (a) A savings bank may contract to pay interest on deposit accounts or may pay earnings on deposit accounts in the form of dividends declared by the savings bank's board.

(b) A savings bank shall compute and pay interest and dividends according to rules adopted by the finance commission.

(c) A savings bank shall credit interest or a dividend to a deposit account on the savings bank's books unless the account holder requests and the savings bank agrees that the savings bank will pay interest or dividends on the account in cash.

(d) A savings bank may pay a cash dividend by check or bank draft.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 60, eff. Sept. 1, 2001.

Sec. 95.008. REDEMPTION OF DEPOSIT ACCOUNT. (a) If no contractual prohibition exists, a savings bank may redeem in the manner the board determines all or part of its deposit accounts if the savings bank:

(1) not later than the 31st day before the redemption date, gives notice of the redemption by certified mail to each affected account holder at the holder's last address as recorded on the books of the savings bank; and

(2) not later than the redemption date, sets aside the amount necessary for the redemption and keeps the amount available

for redemption.

(b) Redemption of deposit accounts must be on a nondiscriminatory basis.

(c) The redemption price of a deposit account is the withdrawal value of the account.

(d) All rights, including the accrual of earnings, that relate to a deposit account called for redemption, other than the right of the account holder of record to receive the redemption price, terminate as of the redemption date.

(e) A savings bank may not redeem any of its deposit accounts if the savings bank is subject to a supervisory control or conservatorship action under Chapter 96, unless the commissioner directs the redemption.

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

Sec. 95.009. LIEN ON DEPOSIT ACCOUNT. (a) Without further agreement or pledge, a savings bank or a federal savings bank doing business in this state has a lien on all deposit accounts owned by an account holder to whom or on whose behalf the savings bank has advanced money by loan or otherwise.

(b) On default in the payment or satisfaction of the account holder's obligation, the savings bank, without notice to or consent of the account holder, may cancel on its books all or part of the account holder's deposit account and apply that amount to payment of the obligation.

(c) The savings bank by written instrument may waive its lien in whole or in part on a deposit account.

(d) A savings bank may take the pledge of a deposit account of the savings bank that is owned by an account holder other than the borrower as additional security for a loan secured by:

(1) a deposit account;

(2) real property; or

(3) both a deposit account and real property.

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

Sec. 95.010. ACCOUNT AS LEGAL INVESTMENT. (a) Each of the following persons may invest money held by the person in a deposit

account of a savings bank doing business in this state:

(1) any fiduciary, including an administrator, executor, guardian, or trustee;

(2) a political subdivision or instrumentality of this state;

(3) a business or nonprofit corporation;

(4) a charitable or educational corporation or association; and

(5) a financial institution, including a bank, savings and loan association, or credit union.

(b) An investment by an insurance company in a deposit account is eligible for tax reducing purposes under Chapters 221 and 222, Insurance Code.

(c) An investment by a school district in a deposit account insured by the Federal Deposit Insurance Corporation meets the requirements of Sections 45.102 and 45.208, Education Code.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.110, eff. September 1, 2005.

Sec. 95.011. APPLICABILITY OF ESTATES CODE. The applicable provisions of Subchapter B, Chapter 111, and Chapters 112 and 113, Estates Code, govern deposit accounts held in a savings bank.

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. 20.011, eff. September 1, 2015.

SUBCHAPTER B. PROVISIONS APPLICABLE TO SPECIFIC TYPES OF ACCOUNTS

Sec. 95.101. ACCOUNT HELD BY MINOR. (a) A savings bank or a federal savings bank may accept a deposit account from a minor as the sole and absolute owner of the account.

(b) On the minor's order, the savings bank may:

(1) pay withdrawals;

(2) accept pledges to the savings bank; and

(3) act in any other manner with respect to the account.

(c) Subject to Subsection (e), a payment or delivery of rights to a minor, or an acquittance signed by a minor who holds a deposit account, is a discharge of the savings bank for that payment or delivery.

(d) If the savings bank requires a minor to furnish an acquittance or pledge or take other action with respect to the minor's deposit account, that action is binding on the minor as if the minor had the capacity of an adult.

(e) If a parent or guardian of a minor informs the savings bank in writing that the minor is not to have the authority to control the minor's deposit account, the minor may not control the account during the minority without the joinder of the parent or guardian.

(f) If a minor dies, the acquittance of a parent or guardian of the minor discharges the savings bank for amounts that in the aggregate do not exceed $1,000.

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

Sec. 95.102. PLEDGE OF JOINT ACCOUNT. (a) Unless the terms of the account provide otherwise, a person on whose signature money may be withdrawn from a deposit account in the names of two or more persons may, by a signed pledge, pledge and transfer to the savings bank or federal savings bank all or part of the account.

(b) A pledge made under Subsection (a) does not sever or terminate the joint and survivorship ownership of the account.

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

Sec. 95.103. ACCOUNT HELD BY FIDUCIARY. (a) A savings bank or federal savings bank doing business in this state may accept a deposit account in the name of a fiduciary, including an administrator, executor, custodian, guardian, or trustee, for a named beneficiary.

(b) A fiduciary may:

(1) vote as a member as if the membership were held absolutely; and

(2) open, add to, or withdraw money from the account.

(c) Except as otherwise provided by law, a payment to a fiduciary or an acquittance signed by the fiduciary to whom a payment

is made is a discharge of the savings bank for the payment.

(d) After a person holding a deposit account in a fiduciary capacity dies, the savings bank may pay or deliver to the beneficiary the withdrawal value of the account, plus earnings on the account, or other rights relating to the account, in whole or in part, if the savings bank has no written notice or order of the probate court of:

(1) the revocation or termination of the fiduciary relationship; or

(2) any other disposition of the beneficial estate.

(e) A savings bank has no further liability for a payment made or right delivered under Subsection (d).

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

Sec. 95.104. TRUST ACCOUNT: UNDISCLOSED TRUST INSTRUMENT. (a) If a savings bank opens a deposit account for a person claiming to be the trustee for another and the savings bank has no other notice of the existence or terms of a trust other than a written claim against the account:

(1) the person claiming to be the trustee may, on the person's signature, withdraw money from the account; and

(2) if that person dies, the savings bank may pay the withdrawal value of all or part of the account, plus earnings on the account, to the person for whom the account was opened.

(b) A savings bank has no further liability for a payment made under Subsection (a).

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

Sec. 95.105. POWER OF ATTORNEY ACCOUNT. (a) A savings bank doing business in this state may continue to recognize the authority of an attorney-in-fact authorized in writing to manage or withdraw money from a deposit account of a member until the savings bank receives written or actual notice of the revocation of that authority.

(b) For purposes of this section, written notice of the death or adjudication of incompetency of a member is considered to be written notice of revocation of the authority of the member's attorney-in-fact.

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

CHAPTER 96. SUPERVISION AND REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 96.001. GENERAL DUTIES. The Department of Savings and Mortgage Lending and the commissioner shall regulate savings banks and subsidiaries of savings banks operating under this subtitle.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.039, eff. September 1, 2007.

Sec. 96.002. ADOPTION OF RULES. (a) The finance commission may adopt rules necessary to supervise and regulate savings banks and to protect public investment in savings banks, including rules relating to:

(1) the minimum amounts of capital required to incorporate and operate as a savings bank, which may not be less than the amounts required of corresponding national banks;

(2) the fees and procedures for processing, hearing, and deciding applications filed with the commissioner or the Department of Savings and Mortgage Lending under this subtitle;

(3) the books and records that a savings bank is required to keep and the location at which the books and records are required to be maintained;

(4) the accounting principles and practices that a savings bank is required to observe;

(5) the conditions under which records may be copied or reproduced for permanent storage before the originals are destroyed;

(6) the form, content, and time of publication of statements of condition;

(7) the form and content of any report that a savings bank is required to prepare and publish or file under this chapter;

(8) the manner in which assets, liabilities, and transactions in general are to be described when entered in the books of a savings bank, so that the entry accurately describes the subject matter of the entry;

(9) the conditions under which the commissioner may require an asset to be charged off or reserves established by transfer from surplus or paid-in capital because of depreciation of or overstated value of the asset;

(10) the change of control of a savings bank;

(11) the conduct, management, and operation of a savings bank;

(12) the withdrawable accounts, bonuses, plans, and contracts for savings programs;

(13) the merger, consolidation, reorganization, conversion, and liquidation of a savings bank;

(14) the establishment of an additional office or the change of office location or name of a savings bank;

(15) the requirements for a savings bank's holding companies, including those relating to:

(A) registration and periodic reporting of a holding company with the commissioner; and

(B) transactions between a holding company, an affiliate of a holding company, or a savings bank; and

(16) the powers of a savings bank to make loans and investments that contain provisions reasonably necessary to ensure that a loan made by a savings bank is consistent with sound lending practices and that the savings bank's investment will promote the purposes of this subtitle, including provisions governing:

(A) the type of loans and the conditions under which a savings bank may originate, make, or sell loans;

(B) the conditions under which a savings bank may purchase or participate in a loan made by another lender;

(C) the conditions for the servicing of a loan for another lender;

(D) the conditions under which a savings bank may lend money on the security of a loan made by another person;

(E) the conditions under which a savings bank may pledge loans held by it as collateral for borrowing by the savings bank;

(F) the conditions under which a savings bank may invest in securities and debt instruments;

(G) the documentation that a savings bank must have in its files at the time of funding or purchase of a loan, an investment, or a participation in a loan;

(H) the form and content of statements of expenses and fees and other charges that are paid by a borrower or that a borrower is obligated to pay;

(I) the title information that must be maintained;

(J) the borrower's insurance coverage of property securing a loan;

(K) an appraisal report;

(L) the financial statement of a borrower;

(M) the fees or other compensation that may be paid to a person in connection with obtaining a loan for a savings bank, including an officer, director, employee, affiliated person, consultant, or third party;

(N) the conditions under which the savings bank may advance money to pay a tax, assessment, insurance premium, or other similar charge for the protection of the savings bank's interest in property securing the savings bank's loans;

(O) the terms under which a savings bank may acquire and deal in real property;

(P) the valuation on a savings bank's books of real property held by the savings bank;

(Q) the terms governing the investment by a savings bank in a subsidiary, the powers that may be exercised by a subsidiary, and the activities that may be engaged in by a subsidiary; and

(R) any other matter considered necessary to administer each type of transaction.

(b) A savings bank or its subsidiary may not engage in a transaction in violation of a rule adopted under this subtitle.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 61, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.040, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 11, eff. September 1, 2013.

SUBCHAPTER B. EXAMINATIONS AND REPORTS

Sec. 96.051. ANNUAL AUDIT. (a) Not later than the 90th day

after the date its fiscal year closes, a savings bank shall obtain an audit by an independent accounting firm that is a member of the American Institute of Certified Public Accountants or its successor.

(b) A copy of the audit and all correspondence reasonably related to the audit shall be provided to the commissioner.

(c) The finance commission may adopt rules as necessary to implement this section.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 464, Sec. 15(4), eff. September 1, 2013.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 62, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 15(4), eff. September 1, 2013.

Sec. 96.053. REPORTS. (a) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 464, Sec. 15(5), eff. September 1, 2013.

(b) A savings bank shall make any report the commissioner may require to administer and enforce this chapter. A report under this section must be:

(1) in the form and manner the commissioner prescribes; and

(2) filed on the date the commissioner prescribes.

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

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.19, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 12, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 15(5), eff. September 1, 2013.

Sec. 96.054. EXAMINATIONS. (a) The commissioner shall periodically examine the affairs of each savings bank and its subsidiaries and the transactions of any holding company that are related to the savings bank subsidiaries of the holding company.

(b) An examination under this section may be performed in

conjunction with an examination by the Federal Deposit Insurance Corporation or another federal depository institutions regulatory agency having jurisdiction over a savings bank. The commissioner may accept an examination made by an appropriate banking agency as a substitute for an examination required by this section.

(c) On completion of a report, a copy of an examination conducted under this section shall be furnished promptly to the savings bank.

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

Sec. 96.055. ADDITIONAL EXAMINATIONS. (a) The commissioner at the saving bank's cost may perform an additional examination or audit or devote extraordinary attention to a savings bank's affairs if the commissioner determines the conditions of the savings bank justify the examination, audit, or attention.

(b) On completion of a report, a copy of an examination or audit report conducted under this section shall be furnished promptly to the savings bank.

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

Sec. 96.056. ACCESS TO BOOKS AND RECORDS. The commissioner, a deputy commissioner, or an examiner or auditor of the commissioner shall be given free access to:

(1) the books and records of a savings bank or a subsidiary or holding company of a savings bank; and

(2) the books and records relating to a savings bank's business kept by an officer, agent, or employee of the savings bank or the subsidiary or holding company of the savings bank.

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

Sec. 96.057. SUBPOENA; ADMINISTRATION OF OATH OR AFFIRMATION. (a) In an examination conducted under this subchapter, the commissioner, the deputy commissioner, or an examiner or auditor of the commissioner may:

(1) subpoena witnesses;

(2) administer an oath or affirmation to a person, including a director, officer, agent, or employee of a savings bank or a savings bank's subsidiary or holding company; or

(3) require and compel by subpoena the production of documents, including records, books, papers, and contracts.

(b) The commissioner may apply to a district court in Travis County for an order requiring a person to obey a subpoena or to appear or answer questions in connection with the examination.

(c) The court shall issue an order under Subsection (b) if the court finds good cause to issue the subpoena or to take testimony.

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

SUBCHAPTER C. SUPERVISORY INTERVENTION

Sec. 96.101. INTERVENTION FOR VIOLATIONS AND UNSAFE AND UNSOUND PRACTICES. (a) The commissioner may intervene in the affairs of a savings bank if the savings bank or a person who participates in the affairs of the savings bank or a subsidiary or holding company of the savings bank:

(1) engages in or is about to engage in an unsafe and unsound practice in conducting the affairs of the savings bank; or

(2) violates or is about to violate:

(A) the articles of incorporation or bylaws of the savings bank;

(B) a law or supervisory order applicable to the savings bank; or

(C) a condition that the commissioner or the finance commission has imposed on the savings bank by written order, directive, or agreement.

(b) The commissioner may intervene in the affairs of a savings bank if a person who participates in the affairs of the savings bank or a subsidiary or holding company of the savings bank violates or is about to violate an order or instruction of the commissioner or a conservator or supervisor in charge of the savings bank's affairs.

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

Sec. 96.102. INTERVENTION FOR FILING INAPPROPRIATE INFORMATION. The commissioner may intervene in the affairs of a savings bank if

the savings bank or a person who participates in the affairs of the savings bank or a subsidiary or holding company of the savings bank files materially false or misleading information in a filing required by Subchapter L, Chapter 92.

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

Sec. 96.103. INTERVENTION FOR ACTIVITY RESULTING IN ACTUAL OR POTENTIAL FINANCIAL LOSS. (a) The commissioner may intervene in the affairs of a savings bank if a person who participates in the affairs of the savings bank or a subsidiary or holding company of the savings bank commits or is about to commit:

(1) a fraudulent or criminal act in conducting the affairs that may cause the savings bank or a subsidiary of the savings bank to become or be in danger of becoming insolvent;

(2) an act that threatens immediate or irreparable harm to the public or the savings bank, a subsidiary of the savings bank, or the deposit account holders or creditors of the savings bank; or

(3) a breach of fiduciary duty that results in actual or probable substantial financial losses or other damages to the savings bank or a subsidiary of the savings bank or that would seriously prejudice the interest of the deposit account holders or holders of other security issued by the savings bank.

(b) The commissioner may intervene in the affairs of a savings bank if the savings bank:

(1) is insolvent;

(2) is in imminent danger of insolvency; or

(3) makes or is about to make:

(A) a loan the value of the security for which is materially overstated; or

(B) an investment the market value of which is materially overstated.

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

Sec. 96.104. INTERVENTION RELATING TO EXAMINATION OF AFFAIRS. (a) The commissioner may intervene in the affairs of a savings bank if a person who participates in the affairs of the savings bank or a subsidiary or holding company of the savings bank:

(1) refuses or is about to refuse to submit to interrogation under oath by the commissioner or the commissioner's agent with respect to the savings bank's affairs; or

(2) materially alters, conceals, removes, or falsifies or is about to materially alter, conceal, remove, or falsify a book or record of the savings bank or a subsidiary or holding company of the savings bank.

(b) The commissioner may intervene in the affairs of a savings bank if the savings bank:

(1) fails to maintain books and records from which the true financial condition of the savings bank or the state of the savings bank's affairs can be determined; or

(2) refuses to direct a person having possession of the books, papers, records, or accounts of the savings bank or the savings bank's subsidiary to permit the commissioner or the commissioner's representative to examine those documents or accounts.

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

Sec. 96.105. TEMPORARY SUPERVISORY ORDER. (a) If the commissioner has reasonable cause to believe that one or more grounds for intervention under Sections 96.101-96.104 exist or are imminent, the commissioner may issue without notice and hearing one or more of the following types of temporary supervisory orders to correct and eliminate the grounds for supervisory action:

(1) an order to cease and desist from continuing a particular action, an order to take affirmative action, or both;

(2) an order suspending or prohibiting a person who participates in the affairs of the savings bank from further participating in the affairs of the savings bank or another savings bank;

(3) an order requiring divestiture of control of a savings bank obtained under Subchapter L, Chapter 92;

(4) an order requiring a person who participates in the affairs of the savings bank or another savings bank to forfeit and pay an administrative penalty in an amount of not more than $25,000; or

(5) an order placing the affairs of the savings bank under the control of a conservator designated in the order, who may take

possession and control of the books, records, assets, liabilities, and business of the savings bank and manage the savings bank under the direction of the commissioner.

(b) An order under this section:

(1) must contain a reasonably detailed statement of the facts on which the order is based; and

(2) takes effect when issued.

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

Sec. 96.106. SERVICE OF TEMPORARY SUPERVISORY ORDER. (a) A temporary supervisory order may be served by personal delivery by an agent of the commissioner or by certified or registered mail.

(b) Service is complete when an officer or director of the savings bank receives the order.

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

Sec. 96.107. HEARING ON TEMPORARY SUPERVISORY ORDER; FINAL ORDER. (a) A temporary supervisory order issued under Section 96.105 becomes final and unappealable on the 15th day after the date on which it is issued unless before that day the savings bank or a person affected by the order requests a hearing before the commissioner to determine whether the order should be vacated, made permanent, or modified.

(b) The commissioner shall set the hearing to be held not earlier than the 10th day or later than the 30th day after the date of the request. The hearing must be held at the offices of the Department of Savings and Mortgage Lending.

(c) After the hearing, the commissioner may enter a final order that vacates the temporary order or makes the temporary order permanent in its original or a modified form that is consistent with the facts found by the commissioner.

(d) The commissioner shall enter the final order not later than the 15th day after the date on which the hearing is completed.

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

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.041, eff.

September 1, 2007.

Sec. 96.108. PLAN OF OPERATION OF SAVINGS BANK AFTER ORDER OF TEMPORARY CONSERVATORSHIP. (a) Before or during a hearing under Section 96.107 on a temporary supervisory order placing a savings bank under the control of a conservator, the board of the savings bank may present to the commissioner a plan to continue the operation of the savings bank in a manner that will correct or eliminate the grounds for the order.

(b) If the commissioner approves the plan or a modification of the plan, the commissioner shall vacate the order and place the savings bank under conservatorship, conditioned on the implementation and diligent prosecution of the plan.

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

Sec. 96.109. ENFORCEMENT OF SUPERVISORY ORDER. (a) The commissioner, after giving notice, may assess against a savings bank or another person designated in a final supervisory order who violates the order, or both, an administrative penalty of not more than $1,000 each for each day of the violation. The savings bank may not reimburse or indemnify a person for any part of the penalty.

(b) In addition to any other remedy provided by law, the commissioner may institute in a district court in Travis County:

(1) a suit for injunctive relief to stop or prevent a violation of a supervisory order; or

(2) a suit for injunctive relief and to collect the administrative penalty.

(c) A bond is not required of the commissioner with respect to injunctive relief granted under this section.

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

Sec. 96.110. STAY OF SUPERVISORY ORDER. (a) A temporary supervisory order may not be stayed pending a hearing unless the commissioner orders a stay.

(b) A final supervisory order may not be stayed pending judicial review unless the reviewing court orders a stay for good

cause.

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

Sec. 96.111. DISCLOSURE OF INFORMATION IN SUPERVISORY ORDER; CONFIDENTIALITY. (a) When a supervisory order is issued under this chapter, the commissioner shall report the existence of the order promptly to the finance commission but shall maintain the confidentiality of the content of the order.

(b) Except as provided by Subsection (c) or (d), information contained in a temporary or final supervisory order or a notice, correspondence, or other record relating to the order is confidential.

(c) The commissioner, for good reason as determined by the commissioner, may disclose the information described by Subsection (b) in a hearing or judicial proceeding under Section 96.107, 96.109, or 96.110 or in a proceeding to assert a defense under Section 96.403.

(d) The commissioner may disclose the information described by Subsection (b) to a department, agency, or instrumentality of this or another state or the United States if the commissioner determines that disclosure is necessary or proper to enforce the laws of this or another state or the United States.

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

Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 13, eff. September 1, 2013.

SUBCHAPTER D. CONSERVATORSHIP

Sec. 96.151. PLACEMENT OF SAVINGS BANK UNDER CONSERVATORSHIP. If the commissioner does not approve a plan to continue the operation of a savings bank under Section 96.108, the conservator shall continue to manage the affairs of the savings bank unless the temporary conservatorship order is modified or vacated:

(1) by order of the commissioner; or

(2) as a result of judicial review.

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

Sec. 96.152. DUTIES OF CONSERVATOR. (a) The conservator and any deputy or assistant conservator appointed by the commissioner, under the direction and supervision of the commissioner, shall:

(1) take possession and control of the books, records, property, assets, liabilities, and business of the savings bank; and

(2) conduct the business and affairs of the savings bank.

(b) The conservator shall:

(1) remove the causes and conditions that made the conservatorship necessary; and

(2) report to the commissioner as required by the commissioner.

(c) The conservator shall preserve, protect, and recover the assets or property of the savings bank, including a claim or cause of action that belongs to or may be asserted by the savings bank. The conservator may deal with that property in the capacity of conservator.

(d) The conservator may file, prosecute, or defend a suit brought by or against the savings bank if the conservator considers it necessary to protect the interested party or property affected by the suit.

(e) A suit filed by the conservator under Subsection (c) must be brought in Travis County.

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

Sec. 96.153. TERM OF CONSERVATOR. The conservator shall serve until the purposes of the conservatorship are accomplished.

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

Sec. 96.154. TRANSFER OF MANAGEMENT OF REHABILITATED SAVINGS BANK. If the savings bank is rehabilitated to the satisfaction of the commissioner, the conservator shall return the management of the savings bank to the savings bank's board under terms that are reasonable and necessary to prevent a recurrence of the conditions that created the need for conservatorship.

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

Sec. 96.155. SCOPE OF AUTHORITY OF OTHER PERSONS DURING CONSERVATORSHIP. During the conservatorship, a person who participates in the affairs of the savings bank shall act according to the conservator's instructions and may exercise only the authority that the conservator expressly grants.

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

Sec. 96.156. LIMITING ORDER DURING CONSERVATORSHIP. (a) During a conservatorship, the commissioner by order may impose limitations on withdrawals from deposit accounts if the commissioner determines that the interests of deposit account holders and creditors of the savings bank are best protected by the limitations.

(b) An order under this section:

(1) must detail the limitations imposed;

(2) must contain a reasonably detailed statement of the facts on which the order is based; and

(3) becomes effective when served on the conservator.

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

Sec. 96.157. SERVICE OF LIMITING ORDER. (a) A limiting order may be served by personal delivery by an agent of the commissioner or by certified or registered mail.

(b) Service is complete when the conservator receives the order.

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

Sec. 96.158. EFFECT OF LIMITING ORDER. (a) Immediately after receiving a limiting order, the conservator shall post a copy of the order at the main entrance of the savings bank.

(b) A deposit account withdrawal that violates a limiting order may not be permitted after the conservator posts the order.

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

Sec. 96.159. HEARING ON LIMITING ORDER; FINAL ORDER. (a) The limiting order becomes final and unappealable on the 15th day after the date on which the order is posted as provided by Section 96.158 unless before that day at least 20 percent of the total number of deposit account holders affected by the order request a hearing before the commissioner to determine whether the order should be vacated, made permanent, or modified.

(b) The commissioner shall set the hearing to be held not earlier than the 10th day or later than the 30th day after the date of the request. The hearing must be held at the offices of the Department of Savings and Mortgage Lending.

(c) After the hearing, the commissioner may issue a final order that vacates the limiting order or makes the limiting order permanent in its original or a modified form consistent with the facts found by the commissioner.

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

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.042, eff. September 1, 2007.

Sec. 96.160. STAY OF LIMITING ORDER. (a) A limiting order may not be stayed pending a hearing unless the commissioner orders a stay.

(b) A final order may not be stayed pending judicial review unless the reviewing court orders a stay for good cause.

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

Sec. 96.161. COST OF CONSERVATORSHIP. (a) The commissioner shall determine the cost of the conservatorship.

(b) The cost of the conservatorship shall be paid from the savings bank's assets as the commissioner directs.

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

Sec. 96.162. VENUE. A suit filed against a savings bank or its conservator while a conservatorship order is in effect must be brought in Travis County.

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

SUBCHAPTER E. VOLUNTARY SUPERVISORY CONTROL

Sec. 96.201. PLACEMENT OF SAVINGS BANK UNDER VOLUNTARY SUPERVISORY CONTROL. (a) A savings bank's board may consent to the commissioner's placement of the savings bank under supervisory control.

(b) The commissioner may appoint the supervisor and one or more deputy supervisors.

(c) Supervisory control continues until the conditions for which the supervisory control was imposed are corrected.

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

Sec. 96.202. POWERS OF SUPERVISORS. A supervisor or deputy supervisor has the powers of a conservator under Subchapter D and any other power established by agreement between the commissioner and the savings bank's board of directors.

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

Sec. 96.203. COST OF SUPERVISORY CONTROL. The cost of the supervisory control of a savings bank shall be set by the commissioner and paid by the savings bank.

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

SUBCHAPTER F. CLOSING

Sec. 96.251. CLOSING OF SAVINGS BANK BY BOARD RESOLUTION. A savings bank's board, by resolution and with the commissioner's consent, may close the savings bank and tender to the commissioner for disposition as provided by this subchapter the assets and all the affairs of the savings bank.

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

Sec. 96.252. CLOSING OF SAVINGS BANK BY COMMISSIONER'S ORDER. The commissioner or the commissioner's representative may close a savings bank if the commissioner determines after an examination that:

(1) the interests of the deposit account holders and creditors of the savings bank are jeopardized because of:

(A) the savings bank's insolvency or imminent insolvency; or

(B) a substantial dissipation of the savings bank's assets or earnings because of a violation of a law or an unsafe or unsound practice; and

(2) it is in the best interests of the deposit account holders and creditors to close the savings bank and liquidate the savings bank's assets.

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

Sec. 96.253. EFFECT OF CLOSING. (a) On closing a savings bank under this subchapter, the commissioner may:

(1) liquidate the savings bank as provided by Subchapter G; or

(2) tender the savings bank's assets and all the savings bank's affairs to the Federal Deposit Insurance Corporation and appoint the Federal Deposit Insurance Corporation as receiver or liquidating agent to act in accordance with this chapter or federal law.

(b) The Federal Deposit Insurance Corporation, on accepting the tender and appointment prescribed by Subsection (a)(2), may:

(1) act without bond or other security as to the appointment; and

(2) without court supervision, exercise any right, power, or privilege provided by the laws of this state to a receiver or liquidating agent, as applicable, and any applicable right, power, or privilege available under federal law.

(c) On acceptance of the appointment prescribed by Subsection (a)(2), possession of and title to all the assets, business, and

property of the savings bank pass to the Federal Deposit Insurance Corporation without the execution of any instrument transferring title or right of use.

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

Sec. 96.254. HEARING ON COMMISSIONER'S ORDER. (a) Not later than the second day, excluding legal holidays, after the date on which the commissioner closes a savings bank under Section 96.252, the savings bank, by resolution of its board, may sue in a district court of Travis County to prohibit the commissioner from taking further action under this subchapter.

(b) The court may restrain the commissioner from taking further action until a hearing on the suit is held. If the court restrains the commissioner, the court shall instruct the commissioner to hold the assets and affairs of the savings bank in the commissioner's possession until disposition of the suit. On receipt of this instruction, the commissioner shall refrain from taking further action, other than a necessary or proper action approved by the court to prevent loss or depreciation in the value of the assets.

(c) The court as soon as possible shall hear the suit and shall enter a judgment prohibiting or refusing to prohibit the commissioner from proceeding under this subchapter.

(d) The commissioner, regardless of the judgment entered by the court or any supersedeas bond filed, retains possession of the savings bank's assets until final disposition of any appeal of the judgment.

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

SUBCHAPTER G. LIQUIDATION

Sec. 96.301. LIQUIDATION OF SAVINGS BANK. (a) If the commissioner doubts that a savings bank subject to a conservatorship order can be rehabilitated, the commissioner may close the savings bank as provided by Subchapter F or set a hearing to determine whether the savings bank should be liquidated. Not later than the 10th day before the hearing date, notice of the hearing shall be given by certified mail to the officers and directors of the savings bank and by publication in a newspaper of general circulation in the

county in which the principal office of the savings bank is located.

(b) If the commissioner closes a savings bank or finds after a hearing under Subsection (a) that the savings bank cannot be rehabilitated and that it is in the public interest and the best interests of the deposit account holders and creditors of the savings bank that the bank be closed and its assets liquidated, the commissioner by liquidation order may appoint a liquidating agent and dissolve the savings bank.

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

Sec. 96.302. REMOVAL OR REPLACEMENT OF LIQUIDATING AGENT. (a) The commissioner, with or without cause, may remove a liquidating agent and appoint another agent.

(b) If a liquidating agent resigns, dies, or otherwise becomes unable to serve, the commissioner shall promptly appoint another agent.

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

Sec. 96.303. DUTIES OF LIQUIDATING AGENT. (a) Under the commissioner's supervision, the liquidating agent shall:

(1) receive and take possession of the books, records, assets, and property of the savings bank;

(2) sell, enforce collection of, and liquidate the assets and property of the savings bank;

(3) sue in the name of the liquidating agent or the savings bank;

(4) defend an action brought against the liquidating agent or the savings bank;

(5) receive, examine, and pass on a claim brought against the savings bank, including a claim of a depositor;

(6) make distributions to and pay creditors, deposit account holders, shareholders, and members of the savings bank as their interests appear;

(7) from time to time make a ratable liquidation dividend on claims that have been proved to the satisfaction of the liquidating agent or that have been adjusted by a court;

(8) after the savings bank's assets have been liquidated,

make further liquidation dividends on claims previously proved or adjusted; and

(9) execute documents and perform any other action that the liquidating agent considers necessary or desirable for the liquidation.

(b) For purposes of making a further liquidation dividend under Subsections (a)(7) and (8), the liquidating agent may accept the statement of an amount due a claimant as shown on the savings bank's books and records instead of a formal proof of claim on the claimant's behalf.

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

Sec. 96.304. NOTICE. (a) Under the commissioner's supervision, the liquidating agent shall give notice to creditors and deposit account holders directing them to present and prove their claims and requiring them to file a written proof of claim at the address designated in the notice.

(b) The notice shall be published once a week for three successive weeks in a newspaper of general circulation in each county in which the savings bank maintained an office or branch to transact business on the date the savings bank ceased unrestricted operations.

(c) Not later than the 30th day after the date on which the notice is first published, the liquidating agent shall mail a similar notice to each depositor and creditor named in the books of the savings bank at the address shown in those books.

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

Sec. 96.305. PRESENTATION OF CLAIM. (a) To be entitled to priority, each person asserting a claim against a savings bank being liquidated under this subchapter must present the claim in writing to the commissioner or the liquidating agent, at the address designated in the notice under Section 96.304 on or before the last day of the 18th month after the date the notice is first published.

(b) The claim must:

(1) contain a statement of the facts supporting the claim;

(2) set out any right of payment priority or other specific right asserted by the claimant; and

(3) be signed and sworn to by the claimant.

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

Sec. 96.306. PRIORITY OF CLAIMS. When a savings bank is liquidated, claims for payment have the same priority that similar claims have when a federal savings bank is liquidated under federal law.

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

Sec. 96.307. ACTION ON CLAIM. (a) Within three months after the date of receipt of a claim against a savings bank being liquidated, the liquidating agent shall approve or reject the claim in whole or in part unless that period is extended by written agreement with the claimant.

(b) A liquidating agent who approves the claim or a part of the claim shall classify the claim and enter the claim and the action taken in a claim register.

(c) A liquidating agent who rejects the claim in whole or in part, or who denies a right of payment priority or any other right asserted by the claimant, shall notify the claimant of the action by registered mail.

(d) An approved claim presented after the declaration and payment of any dividend and on or before the last day of the 18th month after the date on which notice is first published under Section 96.304 qualifies to participate in dividends previously paid before an additional dividend is declared. A claim that is presented after that period does not qualify to participate in a dividend or distribution of assets until all approved claims presented during the period are fully paid.

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

Sec. 96.308. HEARING ON CLAIM; APPEAL OF ADVERSE DETERMINATION OF CLAIM. (a) A claimant may appeal an adverse determination of a claim by filing suit on the claim in a district court of Travis County within three months after the date on which notice is mailed

under Section 96.307.

(b) The determination on a claim becomes final on the expiration of the period prescribed by Subsection (a) if suit is not filed in accordance with that subsection.

(c) Review by a district court under Subsection (a) is by trial de novo.

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

Sec. 96.309. PAYMENT OF FINAL DIVIDEND. (a) The liquidating agent may not pay a final dividend before the first day of the 19th month after the date notice is first published under Section 96.304.

(b) The liquidating agent shall declare and pay a final dividend after:

(1) the prohibitory period prescribed by Subsection (a) expires; and

(2) the liquidating agent liquidates each asset of the savings bank capable of being liquidated or receives sufficient money from the liquidation to:

(A) pay the costs of liquidation;

(B) pay all claims that have been presented and approved; and

(C) leave money available to pay all nonclaiming deposit account holders and creditors of the savings bank.

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

Sec. 96.310. DEPOSIT OF MONEY BY LIQUIDATING AGENT. The liquidating agent shall deposit all unclaimed dividends and all money available for nonclaiming deposit account holders and creditors in one or more state-chartered financial institutions for the benefit of the deposit account holders and creditors entitled to the dividends or money.

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

Sec. 96.311. PAYMENT OF NONCLAIMING DEPOSIT ACCOUNT HOLDERS AND CREDITORS. (a) Except as provided by Subsection (b), the

liquidating agent, on demand, shall pay a deposit account holder or creditor of the savings bank who does not make a claim under Section 96.305 any amount held by the liquidating agent for the benefit of the deposit account holder or creditor.

(b) If the liquidating agent has a doubt about the identity of a claimant or the claimant's right to the money, the liquidating agent shall reject the claim and notify the claimant by registered mail.

(c) The liquidating agent's rejection of a claim becomes final if the claimant does not file suit against the liquidating agent to recover money in a district court of Travis County within three months after the date on which the notice is mailed.

(d) A suit under Subsection (c) is an action in rem. Judgment is binding on all persons interested in the money.

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

Sec. 96.312. COST OF LIQUIDATION. (a) The commissioner shall determine the cost of the liquidation.

(b) The cost of liquidation shall be paid from the savings bank's assets as the commissioner directs.

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

Sec. 96.313. FINAL REPORT. After paying a final dividend as provided by Section 96.309 and performing any necessary or proper action in liquidating the savings bank's assets for the benefit of the deposit account holders and creditors of the savings bank, the liquidating agent shall file with the commissioner a final report of the liquidation.

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

Sec. 96.314. CONTINUED EXISTENCE OF SAVINGS BANK FOLLOWING LIQUIDATION. For the purpose of adjusting and settling claims not disposed of during the liquidation, the savings bank continues to exist until the third anniversary of the date on which the liquidation order is issued.

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

Sec. 96.315. SPECIAL LIQUIDATING AGENT. At the completion of the liquidation, the commissioner may appoint a special liquidating agent if necessary to adjust and settle undisposed claims.

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

Sec. 96.316. CLOSING OF LIQUIDATION; ORDER AND LIABILITY. (a) The liquidating agent shall certify the completion of the liquidation to the commissioner, who shall then issue an order closing the liquidation.

(b) After the closing order, the commissioner and the liquidating agent are discharged from any further duty or liability in connection with the administration of the savings bank's affairs.

(c) After the closing order, a person does not have a claim, suit, or action against the commissioner or the liquidating agent, individually or in an official capacity, except a suit to recover an unclaimed deposit as provided by this subchapter.

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

Sec. 96.317. ADMINISTRATIVE PROCEDURE. The procedures for a contested case hearing under Chapter 2001, Government Code, apply to a hearing set by the commissioner under this subchapter.

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

SUBCHAPTER H. CONFIDENTIALITY

Sec. 96.351. DISCLOSURE BY DEPARTMENT PROHIBITED. Except as otherwise provided by this subtitle or a rule adopted under this subtitle, the following are confidential and may not be disclosed by the commissioner or an examiner, supervisor, conservator, liquidator, inspector, deputy, or assistant clerk or other employee of the Department of Savings and Mortgage Lending who is appointed or acting under this subtitle:

(1) information, regardless of the circumstances under

which the information is obtained, regarding a financial institution or a shareholder, participant, officer, director, manager, affiliate, or service provider of a financial institution, other than information in a public statement or the public portion of a call report or profit and loss statement; and

(2) all related files and records of the department.

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

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.043, eff. September 1, 2007.

Sec. 96.352. DISCLOSURE TO OTHER AGENCIES. This subchapter does not prevent the proper exchange of information relating to savings banks with a representative of a regulatory authority of another state or any other department, agency, or instrumentality of this or another state or the United States if the commissioner determines the disclosure of the information is necessary or proper to enforce the laws of this or another state or the United States.

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

Sec. 96.353. OTHER DISCLOSURE PROHIBITED. (a) Confidential information that is provided to a financial institution or an affiliate or service provider of a financial institution, whether in the form of a report of examination or otherwise, is the confidential property of the Department of Savings and Mortgage Lending.

(b) The information may not be made public or disclosed by the recipient or by an officer, director, manager, employee, or agent of the recipient to a person not officially connected to the recipient as officer, director, employee, attorney, auditor, or independent auditor, except as authorized by a rule adopted under this subchapter or by the commissioner's written approval.

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

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.044, eff. September 1, 2007.

Sec. 96.354. CIVIL DISCOVERY. Discovery of confidential information from a person subject to this subchapter under subpoena or other legal process must comply with rules adopted under this subtitle. The rules may:

(1) restrict release of confidential information to the portion directly relevant to the legal dispute at issue; and

(2) require that a protective order, in the form and under circumstances specified by the rules, be issued by a court before release of the confidential information.

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

Sec. 96.355. INVESTIGATIVE INFORMATION. (a) Notwithstanding any other law, the commissioner may refuse to release information or records in the custody of the Department of Savings and Mortgage Lending if the commissioner believes release of the information or records might jeopardize an investigation of possibly unlawful activities.

(b) Unless this subtitle provides otherwise, this subchapter does not apply to any information or to a report of an investigation obtained or made by the commissioner or the commissioner's staff in connection with an application for charter or with a hearing held by the commissioner under this subtitle. The fact, information, or report may be included in the record of the appropriate hearing.

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

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.045, eff. September 1, 2007.

Sec. 96.356. EXAMINATION REPORT. Unless the commissioner determines that a good reason exists to make the report public, a report of an examination made to the commissioner is confidential.

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

Sec. 96.357. REMOVAL FOR VIOLATION. A person who violates this subchapter or who wilfully makes a false official report on the

condition of a financial institution shall be removed from office or further employment with the Department of Savings and Mortgage Lending.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.046, eff. September 1, 2007.

SUBCHAPTER I. MISCELLANEOUS PROVISIONS

Sec. 96.401. DERIVATIVE SUIT. (a) The commissioner may bring a derivative suit on behalf of a savings bank on an unpursued cause of action if:

(1) the commissioner determines that the suit should be brought to protect the public interest or the interest of the savings bank or the shareholders, members, or creditors of the savings bank; and

(2) the savings bank has not brought suit on the action before the 30th day after the date on which the commissioner gives notice to the savings bank that suit should be brought.

(b) Except as provided by another statute that provides for mandatory venue, venue is in a district court of Travis County.

(c) The commissioner may employ legal counsel to bring and prosecute a derivative suit. The commissioner may:

(1) pay counsel from funds appropriated for the operation of the Department of Savings and Mortgage Lending; or

(2) require the savings bank for which the suit is brought to pay the counsel directly or to reimburse the Department of Savings and Mortgage Lending for the payment.

(d) The savings bank shall be paid an amount equal to the amount of the proceeds of a judgment on a suit brought under this section less unreimbursed costs and expenses, including attorney's fees incurred by the Department of Savings and Mortgage Lending in prosecuting the suit.

(e) In this section, "unpursued cause of action" means an existing claim belonging to a savings bank on which a suit or other effective action has not been filed or taken by or on behalf of the savings bank on or before the last day of the sixth month after the date on which the cause of action arose, involving:

(1) a claim for monetary damages or recovery of property;
(2) a claim for equitable relief;
(3) a cause of action for breach of contract or for enforcement of a contract; or
(4) a claim on a fidelity bond.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.047, eff. September 1, 2007.

Sec. 96.402. PAYMENT OF INSURED DEPOSIT LIABILITIES BY FDIC. If the Federal Deposit Insurance Corporation pays the insured deposit liabilities of a savings bank that has been closed or is being liquidated under this chapter, regardless of whether the Federal Deposit Insurance Corporation has become receiver or liquidating agent, the Federal Deposit Insurance Corporation is subrogated, to the extent of the payment, to all rights that the owners of the deposit accounts have against the savings bank.

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

Sec. 96.403. ENFORCEABILITY OF LOAN PROMISE OR AGREEMENT MADE BY SAVINGS BANK BEFORE CONSERVATORSHIP OR SUPERVISORY CONTROL. If a promise or agreement to lend money is not otherwise unenforceable under Chapter 26, Business & Commerce Code, and if the promise or agreement is made by the savings bank before the savings bank is placed under conservatorship or supervisory control, the promise or agreement or a memorandum of the promise or agreement is enforceable against the savings bank only if the promise or agreement or memorandum:
(1) is in writing and states the material terms of the loan and the loan's repayment;
(2) is signed by an authorized officer or employee of the savings bank and the person to whom the promise or agreement was made; and
(3) is approved by the savings bank's board of directors.

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

Sec. 96.404. INTEREST IN SAVINGS BANK PROHIBITED FOR DEPARTMENT. (a) A savings bank or a director, officer, employee, or representative of a savings bank may not give a loan or gratuity, directly or indirectly, to the commissioner, an employee of the Department of Savings and Mortgage Lending, or a spouse of the commissioner or employee.

(b) The commissioner or an employee of the Department of Savings and Mortgage Lending may not:

(1) hold an office or position in a domestic savings bank or exercise a right to vote on a domestic savings bank matter because the person is a member of or shareholder in the savings bank;

(2) hold an interest, directly or indirectly, in a domestic savings bank; or

(3) undertake an indebtedness as a borrower, directly or indirectly, or endorser, surety, or guarantor or sell or otherwise dispose of a loan or investment to a domestic savings bank.

(c) If the commissioner or an employee of the Department of Savings and Mortgage Lending has a prohibited, direct or indirect right or interest in a domestic savings bank at the time of appointment or employment, the commissioner or employee shall dispose of the right or interest not later than the 60th day after the date of appointment or employment.

(d) If the commissioner or an employee of the Department of Savings and Mortgage Lending is indebted as a borrower, directly or indirectly, or is an endorser, surety, or guarantor on a note to a domestic savings bank at the time of appointment or employment, the commissioner or employee may continue in that capacity until that debt is paid.

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

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.048, eff. September 1, 2007.

Sec. 96.405. PERMITTED TRANSACTIONS FOR DEPARTMENT RELATING TO SAVINGS BANK. (a) The commissioner or an employee of the Department of Savings and Mortgage Lending may hold a deposit account at a

savings bank and receive earnings on the account.

(b) If a loan or other note of the commissioner or an employee of the Department of Savings and Mortgage Lending is acquired by a savings bank, the commissioner or employee may continue as a borrower, endorser, surety, or guarantor of the loan or note until the loan or note is paid.

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

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.049, eff. September 1, 2007.

CHAPTER 97. HOLDING COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS APPLICABLE TO HOLDING COMPANIES

Sec. 97.001. RULES. (a) The finance commission shall adopt rules:

(1) providing for the registration of and reporting by holding companies;

(2) setting limitations on the activities and investments of holding companies; and

(3) concerning other matters as appropriate under this chapter.

(b) The finance commission may adopt rules governing transactions between a subsidiary savings bank of a holding company and an affiliate of the subsidiary.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 63, eff. Sept. 1, 2001.

Sec. 97.002. REGISTRATION. (a) A holding company shall register with the commissioner, on a form prescribed by the commissioner, not later than the 90th day after the date the company becomes a holding company.

(b) The registration must include information, including information on related matters the commissioner determines is necessary and appropriate, regarding the holding company's and its subsidiaries':

(1) financial condition;

(2) ownership;

(3) operations;
(4) management; and
(5) intercompany relations.
(c) The commissioner may require the registration to be under oath.
(d) On application, the commissioner may extend the time limit under Subsection (a).

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

Sec. 97.003. RELEASE FROM REGISTRATION. The commissioner, on the commissioner's own motion or on application, may release a registered holding company from the registration if the commissioner determines that the company no longer controls a savings bank.

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

Sec. 97.004. REPORTS. (a) Each holding company and each subsidiary of a holding company, other than a savings bank, shall file with the commissioner reports required by the commissioner.
(b) Each report must:
(1) be made under oath;
(2) be in the form and for the period prescribed by the commissioner; and
(3) contain information concerning the operations of the holding company and its subsidiaries as required by the commissioner.

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

Sec. 97.005. BOOKS AND RECORDS. Each holding company shall maintain books and records as required by the commissioner.

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

Sec. 97.006. EXAMINATIONS. (a) The commissioner may require an examination of a holding company and each subsidiary of a holding company.

(b) The holding company shall pay the cost of an examination.

(c) The confidentiality provisions of Subchapter H, Chapter 96, apply to this section.

(d) The commissioner may furnish examination and other reports to any appropriate governmental department, agency, or instrumentality of this state, another state, or the United States.

(e) For purposes of this section, the commissioner, if feasible, may use reports filed with or examinations made by appropriate federal agencies or regulatory authorities of other states.

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

Sec. 97.007. AGENT FOR SERVICE OF PROCESS. The commissioner may require a holding company or a person, other than a corporation, connected with a holding company to execute and file an irrevocable appointment of agent for service of process on a form prescribed by the commissioner.

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

SUBCHAPTER B. MUTUAL HOLDING COMPANIES

Sec. 97.051. REORGANIZATION TO BECOME MUTUAL HOLDING COMPANY. (a) Notwithstanding any other law, a savings bank may be reorganized as a mutual holding company by submitting to the commissioner an application for approval of reorganization.

(b) Before submission, an application for reorganization must be approved by a majority vote of the members or shareholders of the savings bank cast at an annual meeting or a special meeting called to consider the reorganization.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.21, eff. September 1, 2005.

Sec. 97.052. APPLICATION FOR APPROVAL OF REORGANIZATION. The application for approval of reorganization must contain:

(1) a brief statement summarizing a reorganization plan;

(2) two copies of the proposed articles of incorporation of

the subsidiary savings bank acknowledged by the incorporators of the subsidiary savings bank;

(3) two copies of the proposed bylaws of the savings bank;

(4) a statement that the plan of reorganization was advised, authorized, and approved by the savings bank in the manner and by the vote required by its charter and the laws of this state; and

(5) a statement of the manner of approval.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.21, eff. September 1, 2005.

Sec. 97.053. PLAN OF REORGANIZATION. (a) The plan of reorganization must provide that:

(1) a subsidiary savings bank shall:

(A) be incorporated under Subchapter B, Chapter 92; or

(B) on prior approval of the commissioner, be incorporated under Subchapter C, Chapter 92;

(2) the savings bank shall transfer a substantial part of its assets to the subsidiary savings bank, and the subsidiary savings bank shall assume a substantial part of the savings bank's liabilities, including all depository liabilities;

(3) as a result of the reorganization, the mutual holding company must hold more than 50 percent of the stock of the subsidiary savings bank; and

(4) after transfer and assumption, persons with prior corresponding rights as depositors or creditors against a savings bank have the same rights with respect to the mutual holding company and the subsidiary savings bank.

(b) The plan of reorganization must set forth the necessary corporate steps for the savings bank to reorganize into a mutual holding company, including:

(1) all required charter amendments; and

(2) a description of the corporate management of the reorganized mutual holding company.

(c) The plan of reorganization may contain any other provision not inconsistent with law or finance commission rules.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 5.21, eff. September 1, 2005.

CHAPTER 98. FOREIGN FINANCIAL INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 98.001. LIMITATION ON RIGHT TO DO BUSINESS AS SAVINGS BANK. (a) A person may not do business as a savings bank in this state or maintain an office in this state for the purpose of doing business in this state unless the person is a:

(1) domestic savings bank;

(2) federal savings bank; or

(3) foreign savings bank that holds a certificate of authority issued under Subchapter I, Chapter 92, or Section 61, Chapter 61, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 881a-60, Vernon's Texas Civil Statutes).

(b) Subsection (a) does not prohibit activity that is not considered to be transacting business in this state under Section B, Article 8.01, Texas Business Corporation Act.

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

Sec. 98.002. APPLICATION OF LAW AND RULES. This subtitle and each rule adopted under this subtitle apply to the operations in this state of a foreign savings bank and may be enforced by the commissioner.

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

Sec. 98.003. CONTRACTS CONSTRUED UNDER LAW OF THIS STATE. A contract between a foreign savings bank and a resident of this state is governed by the laws of this state.

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

Sec. 98.004. FEDERAL SAVINGS BANK. A federal savings bank is not a foreign corporation or foreign savings bank for purposes of this subtitle.

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

Sec. 98.005. AUTHORIZATION TO RETAIN OFFICES. A federal savings bank that has been merged, consolidated, or converted into a domestic or foreign savings bank or association is entitled to retain any authorized office under the terms provided for a foreign savings bank under Subchapter I, Chapter 92.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.35(a), eff. Sept. 1, 1999.

SUBCHAPTER B. POWERS OF FOREIGN SAVINGS BANK; ELIGIBILITY OF ACCOUNTS FOR INVESTMENT

Sec. 98.101. POWERS OF FOREIGN SAVINGS BANK; ELIGIBILITY OF ACCOUNTS FOR INVESTMENT. (a) A foreign savings bank operating under a certificate of authority issued under Subchapter I, Chapter 92, has the rights and privileges of a savings bank created under this subtitle. The savings bank's deposit accounts are eligible for investment to the same extent as those of a domestic savings bank.

(b) A foreign savings bank may not be considered a savings bank organized under the laws of this state.

(c) A foreign savings bank operating in this state under this chapter may not exercise a power, perform a function, or offer a service that a domestic savings bank may not exercise, perform, or offer.

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

SUBCHAPTER C. CERTIFICATE OF AUTHORITY

Sec. 98.201. RENEWAL OF CERTIFICATE. A foreign savings bank may renew a certificate of authority issued under Subchapter I, Chapter 92, by paying a renewal fee in January of each year. The finance commission by resolution shall set the fee annually.

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

Sec. 98.202. REVOCATION OF CERTIFICATE. (a) The commissioner may revoke a foreign savings bank's certificate of authority on the

failure or refusal of the savings bank to comply with a final order of the commissioner.

(b) On revocation under Subsection (a), an agent of the savings bank may not transact business in this state except to:

(1) receive a payment to apply to an active loan contract; or

(2) pay a withdrawal request.

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

SUBCHAPTER D. EXAMINATION AND REGULATION

Sec. 98.301. FREQUENCY OF EXAMINATION. A foreign savings bank holding a certificate of authority issued under Subchapter I, Chapter 92, may be examined not more than once each year.

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

Sec. 98.302. EXAMINATION CHARGES. A foreign savings bank holding a certificate of authority issued under Subchapter I, Chapter 92, shall pay:

(1) an examination fee in the amount set for a domestic savings bank under Section 91.007;

(2) all travel expenses of the examination; and

(3) the amount of the examination expense that exceeds the amount of the examination fee, if any.

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

Sec. 98.303. AGREEMENT WITH REGULATORY AUTHORITY OF OTHER STATE. (a) The commissioner, in exercising the supervisory and regulatory authority granted under Chapter 96, may enter into a cooperative agreement with a regulatory authority of another state to facilitate the regulation of foreign savings banks doing business in this state.

(b) The commissioner may accept a report of an examination and other records from the regulatory authority of the other state instead of conducting an examination outside this state.

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

Sec. 98.304. COMMISSIONER'S AUTHORITY TO ISSUE ORDERS. The commissioner may issue an order against a foreign savings bank holding a certificate of authority in the same manner provided by Chapter 96 for issuance of an order against a domestic savings bank.

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

CHAPTER 119. MISCELLANEOUS PROVISIONS APPLICABLE TO SAVINGS BANKS

SUBCHAPTER A. GENERAL MISCELLANEOUS PROVISIONS

Sec. 119.001. APPLICABILITY OF CHAPTER 4, BUSINESS & COMMERCE CODE. Chapter 4, Business & Commerce Code, applies to a savings bank with respect to an item paid, collected, settled, negotiated, or otherwise handled by the savings bank for a customer.

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

Sec. 119.002. APPLICABILITY OF SAVINGS AND LOAN LAWS TO SAVINGS BANKS. (a) Except as provided by Subsection (b), a statute of this state or a rule adopted under the statute that applies to or exempts a corporation or other organization incorporated or organized under Subtitle B or an association as defined by Section 61.002 also applies to or exempts a savings bank.

(b) Subsection (a) does not apply to Chapters 11-13, this subtitle, Subtitle A, Subtitle B, or the Penal Code.

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

Sec. 119.003. ACKNOWLEDGMENT OR PROOF TAKEN BY MEMBER, STOCKHOLDER, OR EMPLOYEE OF SAVINGS BANK. A public officer who is qualified to take an acknowledgment or proof of a written instrument and who is a member or employee of, or a shareholder in, a savings bank or federal savings bank is not disqualified because of that relationship to the savings bank or federal savings bank from taking an acknowledgment or proof of a written instrument in which a savings bank or federal savings bank is interested.

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

Sec. 119.004. RENDITION OF CERTAIN PERSONAL PROPERTY FOR AD VALOREM TAXATION. (a) Each domestic savings bank and each federal savings bank shall render for ad valorem taxation all of its personal property, other than furniture, fixtures, equipment, and automobiles, as a whole at the value remaining after deducting the following from the total value of its entire assets:

(1) all debts that it owes;

(2) all tax-free securities that it owns;

(3) its loss reserves and surplus;

(4) its deposit liability; and

(5) the appraised value of its furniture, fixtures, and real property.

(b) The domestic savings bank or federal savings bank shall render the personal property, other than furniture, fixtures, equipment, and automobiles, to the chief appraiser of the appraisal district in the county in which its principal office is located.

(c) Furniture, fixtures, equipment, and automobiles of a domestic savings bank or federal savings bank shall be rendered and valued for ad valorem taxation as provided by the Tax Code.

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

Sec. 119.005. STATE TAXATION OF SAVINGS BANKS. The state shall tax a domestic or federal savings bank doing business in this state in the same manner and to the same extent as a corresponding savings and loan association.

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

Sec. 119.006. INITIATION OF RULEMAKING BY SAVINGS BANKS. The finance commission shall initiate rulemaking proceedings under Chapter 2001, Government Code, if at least 20 percent of the savings banks petition the finance commission in writing requesting the adoption, amendment, or repeal of a rule.

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

by Acts 2001, 77th Leg., ch. 867, Sec. 64, eff. Sept. 1, 2001.

Text of section effective until January 1, 2022

Sec. 119.007. EXEMPTION FROM SECURITIES LAWS. A deposit account, certificate, or other evidence of an interest in the deposit liability of a savings bank or federal savings bank is not considered a security under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes). A security of these savings banks, other than an interest in the deposit liability of a savings bank, is not subject to the registration requirements of that Act. A person whose principal occupation is being an officer of a savings bank is exempt from the registration and licensing provisions of that Act with respect to that person's participation in a sale or other transaction involving securities of the savings bank of which the person is an officer.

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

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.13, eff. January 1, 2022.

Text of section effective on January 1, 2022

Sec. 119.007. EXEMPTION FROM SECURITIES LAWS. A deposit account, certificate, or other evidence of an interest in the deposit liability of a savings bank or federal savings bank is not considered a security under The Securities Act (Title 12, Government Code). A security of these savings banks, other than an interest in the deposit liability of a savings bank, is not subject to the registration requirements of that Act. A person whose principal occupation is being an officer of a savings bank is exempt from the registration and licensing provisions of that Act with respect to that person's participation in a sale or other transaction involving securities of the savings bank of which the person is an officer.

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

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.13, eff. January 1, 2022.

Sec. 119.008. LIABILITY OF COMMISSIONER AND OTHER COMMISSION PERSONNEL; DEFENSE BY ATTORNEY GENERAL. (a) The commissioner, a member of the finance commission, a deputy commissioner, an examiner, or any other officer or employee of the Department of Savings and Mortgage Lending is not personally liable for damages arising from the person's official act or omission unless the act or omission is corrupt or malicious.

(b) The attorney general shall defend an action brought against a person described by Subsection (a) because of the person's official act or omission without regard to whether the person is an officer or employee of the department at the time the action is initiated.

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

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.050, eff. September 1, 2007.

SUBCHAPTER B. ACCESS TO AND DISCLOSURE OF CERTAIN INFORMATION

Sec. 119.101. ACCESS TO BOOKS AND RECORDS OF SAVINGS BANK. (a) The books and records of a savings bank may be examined only by:

(1) the commissioner or the commissioner's representative in accordance with Sections 96.054-96.057;

(2) a person authorized to act for the savings bank;

(3) an agent of a governmental agency that has insured the deposit accounts of the savings bank;

(4) a borrower or deposit account holder of the savings bank, in accordance with Subsection (b); or

(5) for a capital stock savings bank, a stockholder of the capital stock savings bank, in accordance with Subsection (c).

(b) A borrower or deposit account holder of a savings bank is entitled to examine only the books and records of the savings bank that relate to the person's loan or deposit account.

(c) A stockholder of a capital stock savings bank has the same right to examine the relevant books and records of a savings bank as a shareholder of a business corporation under the Texas Business Corporation Act.

(d) A person is entitled to a partial or complete list of the

stockholders of a stock savings bank or of the members of a mutual savings bank only if expressly permitted by the board of directors of the savings bank.

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

Sec. 119.102. PRODUCTION AND ADMISSIBILITY OF ITEMS OF SAVINGS BANK IN JUDICIAL PROCEEDING. (a) In a judicial proceeding, the court may order the production of books, records, and files of a savings bank.

(b) The books, records, and files of a savings bank are not admissible as evidence in any proceeding concerning the validity of a tax assessment or the collection of delinquent taxes, penalties, and interest, unless:

(1) a stockholder or deposit account holder is a proper party to the proceeding, in which event a book, file, or record pertaining to the account of the party is admissible; or

(2) the savings bank is a proper party to the proceeding, in which event a book, file, or record material to the proceeding is admissible.

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

SUBCHAPTER C. OFFENSES AND PENALTIES

Sec. 119.201. ADMINISTRATIVE PENALTY FOR FAILING TO COMPLY WITH SUBTITLE. (a) The commissioner may require a savings bank that knowingly violates this subtitle or a rule adopted under this subtitle to pay to the Department of Savings and Mortgage Lending an administrative penalty not to exceed $10,000 for each day that the violation occurs after notice of the violation is given by the commissioner.

(b) On the commissioner's certification that a savings bank has not paid a penalty assessed under this section, the attorney general may file suit to collect the penalty.

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

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 3.04, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.051, eff. September 1, 2007.

Sec. 119.202. CRIMINAL SLANDER OR LIBEL. (a) A person commits an offense if the person:

(1) knowingly makes, utters, circulates, or transmits to another person a statement that is untrue and derogatory to the financial condition of a savings bank; or

(2) with intent to injure a savings bank counsels, aids, procures, or induces another person to originate, make, utter, transmit, or circulate a statement or rumor that is untrue and derogatory to the financial condition of the savings bank.

(b) An offense under Subsection (a) is a state jail felony.

Added by Acts 2013, 83rd Leg., R.S., Ch. 464 (S.B. 1008), Sec. 14, eff. September 1, 2013.

SUBTITLE D. CREDIT UNIONS

CHAPTER 121. GENERAL PROVISIONS

Sec. 121.001. SHORT TITLE. This subtitle may be cited as the Texas Credit Union Act.

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

Sec. 121.0011. POLICY. The purposes of this subtitle are to safeguard the public interest, to promote public confidence in credit unions doing business in this state, to provide for the protection of the interests, shares, and deposits of credit unions, to delegate to the department rulemaking and discretionary authority that may be necessary to assure that credit unions operating under this subtitle may be sufficiently flexible and readily responsive to changes in economic conditions and practices, to maintain sound credit union growth and financial integrity, fiscal responsibility, and independent judgment in the management of the business affairs of credit unions, to permit credit unions to effectively provide a full array of financial and financially related services, to provide effective supervision and regulation of credit unions and their fields of membership, and to clarify and modernize the law governing

the credit unions doing business in this state. This subtitle is the public policy of this state and necessary to the public welfare.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.15, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 87, Sec. 2, eff. Sept. 1, 1999.

Sec. 121.002. DEFINITIONS. In this subtitle:

(1) "Board" means the board of directors of a credit union.

(2) "Credit union," unless the context relates to a federal credit union, means a voluntary, cooperative, nonprofit financial institution authorized to do business in this state under this subtitle for purposes of:

(A) encouraging thrift among its members;

(B) creating a source of credit at fair and reasonable interest rates;

(C) developing and providing to its members alternative methods of financing their purchases at reasonable costs;

(D) providing an opportunity for its members to use and control their money to improve their economic and social condition; and

(E) conducting any other business, engaging in any other activity, or providing any other service that may benefit its members.

(3) "Commission" means the Credit Union Commission.

(4) "Commissioner" means the credit union commissioner.

(5) "Department" means the credit union department.

(6) "Deputy commissioner" means the deputy credit union commissioner.

(7) "Foreign credit union" means a credit union that is not organized under the laws of this state or the United States.

(8) "Law enforcement agency" means the Department of Public Safety of the State of Texas, the Federal Bureau of Investigation, or any local police or sheriff department.

(9) "Membership share" means a designated share account of a credit union consisting of the balance held by the credit union and established by a credit union member in accordance with the standards specified by the credit union.

(10) "Organization" means a corporation, partnership, association, limited liability company, or other legal entity.

(11) "Unsafe or unsound condition," with respect to a credit union, includes:

(A) being insolvent;

(B) having incurred or being likely to incur a loss that will deplete all or substantially all of the credit union's net worth; or

(C) being in imminent danger of losing the credit union's share and deposit insurance or guarantee.

(12) "Unsafe or unsound practice" means an action or inaction in the operation of a credit union that is contrary to generally accepted standards of prudent operation, the likely consequences of which, if continued, would be abnormal and material risk of loss or danger to a credit union, the credit union's members, or an organization insuring or guaranteeing the credit union's shares and deposits.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 157, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 533, Sec. 6, eff. Sept. 1, 2003.

Sec. 121.003. CREDIT UNIONS SUBJECT TO SUBTITLE. A credit union organized and existing under the laws of this state is governed by and authorized to do business under this subtitle.

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

Sec. 121.004. LIBERAL CONSTRUCTION. This subtitle shall be liberally construed to effect its purposes.

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

Sec. 121.005. HEARINGS. (a) A hearing held under this subtitle is governed by Chapter 2001, Government Code.

(b) The commission may adopt rules of procedure for a hearing held under this subtitle.

(c) This section does not apply to a meeting under Section 122.005.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.14(a), eff. Sept. 1, 1999.

Sec. 121.006. PROCEDURE AND RULES APPLICABLE TO CERTAIN PROCEEDINGS. (a) If the commissioner proposes to revoke a credit union's certificate of incorporation, the credit union is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) A proceeding for a disciplinary action is governed by Chapter 2001, Government Code. Rules of practice adopted by the commission under Section 2001.004, Government Code, applicable to a proceeding for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.14(b), eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 7, eff. Sept. 1, 2003.

CHAPTER 122. ORGANIZATIONAL AND FINANCIAL REQUIREMENTS

SUBCHAPTER A. INCORPORATION REQUIREMENTS

Sec. 122.001. APPLICATION TO INCORPORATE. (a) Seven or more individuals may apply to incorporate a credit union under this chapter if:

(1) each is at least 18 years old;

(2) a majority are residents of this state;

(3) each has subscribed for at least 10 shares; and

(4) all share the definable community of interest stated in the articles of incorporation.

(b) The incorporators shall file with the commissioner:

(1) an application in a form prescribed by the commission; and

(2) filing fees required and set by the commission.

(c) The application must contain:

(1) two copies of the articles of incorporation, which must state:

(A) the name of the credit union;

(B) the municipality and county where the credit union's principal place of business is to be located;

(C) that the credit union's term of existence is

perpetual;

(D) that the credit union's fiscal year is the calendar year;

(E) the initial share accounts;

(F) the name and address of, and the number of shares subscribed by, each incorporator;

(G) the number of directors constituting the initial board and the name and address of each person who will serve as director until the first annual meeting or until a successor is elected and qualified; and

(H) the definable community of interest shared by the members of the credit union at the time of incorporation;

(2) two copies of the standard bylaws for the general operation of the credit union; and

(3) a business plan covering three years and providing a detailed explanation of actions intended to accomplish the primary functions of the credit union.

(d) The articles of incorporation must be signed and sworn to.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 8, eff. Sept. 1, 2003.

Sec. 122.002. STANDARD ARTICLES OF INCORPORATION AND BYLAWS. (a) To simplify the process of organizing new credit unions, the commission shall prepare standard articles of incorporation and bylaws.

(b) The standard forms shall be made available without charge to a person desiring to organize a credit union.

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

Sec. 122.003. CORPORATE NAME; CRIMINAL PENALTY. (a) The name of a credit union must include the words "credit union" or the abbreviation "CU" and an appropriate descriptive word or words, or an acronym made up of initials of the appropriate descriptive word or words and ending in "CU," approved by the commissioner.

(b) Unless a credit union is formed by merger or consolidation, the commissioner may not issue a certificate of incorporation to the credit union or approve the change of the name of the credit union if

it would have the same name as another credit union or a name so nearly resembling the name of another credit union as to be calculated to deceive.

(c) A person who is not a credit union authorized to do business in this state under this subtitle or the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.), or an organization, corporation, or association the membership or ownership of which is primarily confined to credit unions or credit union organizations, may not do business under or use a name or title containing the words "credit union" or any derivation of that term that:

(1) indicates or reasonably implies that the person carries on or transacts the kind of business carried on or transacted by a credit union; or

(2) is calculated to lead a person to believe that the business being conducted is the type of business carried on or transacted by a credit union.

(d) A person who violates Subsection (c) commits a Class A misdemeanor.

(e) The commissioner may petition a court to enjoin a violation of this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 157, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 533, Sec. 9, eff. Sept. 1, 2003.

Sec. 122.004. INVESTIGATION BY COMMISSIONER. The commissioner may conduct an investigation and obtain any information or report from any person, including a law enforcement agency, that the commissioner considers necessary.

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

Sec. 122.005. PROCEDURE FOR CERTAIN APPROVALS. (a) This section applies to a request for approval by the commissioner of:

(1) an application for incorporation under this subchapter;

(2) a request for approval of an amendment to a credit union's articles of incorporation under Section 122.011, including an amendment to expand the credit union's field of membership; and

(3) a merger or consolidation under Subchapter D.

(b) Before approving a request to which this section applies, the commissioner shall submit notice of the request to the secretary of state for publication in the Texas Register. The commission by rule shall provide for other appropriate public notice of the request. The commissioner may waive the requirements of this subsection or permit delayed public notice on a determination that waiver or delay is in the public interest. If the requirements of this subsection are waived, the information that would be contained in a public notice becomes public information under Chapter 552, Government Code, on the 35th day after the date the request is made.

(c) Before making a determination on a request to which this section applies, the commissioner must accept comment from any interested party that wishes to comment. This comment may be in the form of written testimony or may be provided at a meeting with the commissioner held for the purpose of receiving the comment. This meeting shall be held if requested by any interested party. The commissioner may hold the meeting regardless of whether an interested party requests the meeting. The commission may establish reasonable rules governing the circumstances and conduct of the meeting. Chapter 2001, Government Code, does not apply to the meeting. Not later than the 60th day after the date the notice is published in the Texas Register, or if the notice is not published, after the date the request is received, the commissioner shall approve or disapprove the application.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.01(a), eff. Sept. 1, 1999.

Sec. 122.006. DECISION ON APPLICATION TO INCORPORATE; ISSUANCE OF CERTIFICATE. (a) The commissioner shall approve an application to incorporate a credit union if the commissioner determines:

(1) that the incorporators have complied with this chapter and rules adopted under this chapter; and

(2) from information furnished with the application, the results of any investigation, the evidence submitted at any hearing, and information in the department's official records, that:

(A) the character and general fitness of the incorporators and the members of the initial board warrant belief that the credit union's business and affairs will be properly

administered in accordance with this subtitle and rules adopted under this subtitle;

(B) the character and size of the field of membership to be served by the credit union conform with this subtitle and rules adopted under this subtitle and favor the credit union's economic viability; and

(C) the incorporators and the members of the initial board are acting in good faith and are making the application in accordance with the purposes of this subtitle.

(b) In addition to the determinations made under Subsection (a) and in accordance with commission rules, the commissioner shall consider the effect of overlapping fields of membership on the applicant credit union and existing state or federal credit unions doing business in this state. The commissioner may consider the availability and adequacy of financial services in the local community and the effect that the incorporation of the credit union would have on the local community. As a condition of approval of the application, the commissioner may require the applicant credit union to limit or eliminate overlaps, in accordance with the rules, to achieve the purposes of this subtitle and promote the welfare and stability of those credit unions.

(c) The commissioner by written order shall state the determinations required by Subsection (a) and approve or deny the application. The commissioner may make approval of an application conditional and shall include any conditions in the order approving the application.

(d) An order of the commissioner or commission shall be promptly mailed to the incorporators by registered or certified mail.

(e) After the commissioner in the absence of an appeal or the commission after the conclusion of an appeal approves the application, the commissioner shall:

(1) issue a certificate of incorporation;

(2) deliver copies of the approved articles of incorporation and bylaws to the incorporators; and

(3) retain copies of those documents in the department's permanent files.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.01(b), eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 533, Sec. 10, eff. Sept. 1, 2003.

Sec. 122.007. APPEAL TO COMMISSION. (a) The commission by rule shall provide for appeal of the commissioner's order by an incorporator or other aggrieved person.

(b) The commissioner's order may be appealed to the commission not later than the 60th day after the date of the order.

(c) After reviewing information or evidence the commission considers necessary or relevant, the commission by written order shall affirm or reverse the commissioner's decision.

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

Sec. 122.008. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORATION. (a) A credit union's existence begins when the commissioner issues the certificate of incorporation.

(b) The certificate of incorporation is conclusive evidence that the incorporators have complied with this subtitle and that the credit union is incorporated under this chapter.

(c) Acceptance of a certificate of incorporation by the credit union is conclusive evidence that the credit union is authorized to do business under this subtitle.

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

Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 4, eff. September 1, 2013.

Sec. 122.009. REQUIREMENTS FOR COMMENCING BUSINESS. (a) A credit union may not transact business or incur debt that is not incidental to its organization or to obtaining a subscription to or payment for its shares or deposits before it:

(1) has received paid-in shares or deposits of at least $1,000;

(2) has at least 100 members;

(3) has fulfilled all agreements and conditions related to approval of an application for incorporation and issuance of a certificate of incorporation; and

(4) has notified the department of its compliance with

Subdivisions (1)-(3).

(b) The commission may adopt reasonable rules to:

(1) require greater minimum membership and paid-in shares or deposits; or

(2) prescribe additional requirements a credit union must meet before transacting business or incurring indebtedness.

(c) The commissioner may waive a requirement of this section or of a rule adopted under this section if the commissioner finds that the credit union:

(1) does not have supervisory problems that adversely affect its ability to operate properly; and

(2) is adequately capitalized.

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

Sec. 122.010. DEADLINE FOR COMMENCING BUSINESS. (a) A credit union shall begin business before six months after the date of the order approving the credit union's application.

(b) On request and for good cause shown, the commissioner may grant a credit union that has not begun business within the time prescribed by Subsection (a) a reasonable extension to provide an opportunity to overcome the cause of the delay.

(c) The incorporators may appeal to the commission, in accordance with commission rules, a commissioner's decision refusing a request for an extension.

(d) The commissioner may cancel the certificate of incorporation in accordance with commission rules if a credit union does not begin business within the prescribed time.

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

Sec. 122.011. AMENDMENT OF ARTICLES OF INCORPORATION OR BYLAWS. (a) The board may amend the articles of incorporation or bylaws by a two-thirds vote of the directors present at a meeting at which a quorum is present. The board shall submit amendments to the commissioner.

(b) Unless the amendment is a standard bylaw adopted by the commission, the commissioner in writing shall approve or disapprove an amendment.

(c) In approving an amendment, the commissioner shall make the findings and may take the actions provided by Sections 122.006(a) and (b). The commissioner may not approve an amendment if the commissioner finds that it violates this subtitle or rules adopted under this subtitle. The commissioner shall state with reasonable specificity the reasons for disapproval. An amendment takes effect on the commissioner's approval.

(d) The board shall report an amendment to the credit union's membership not later than the next membership meeting after the commissioner approves the amendment.

(e) The commission shall adopt rules for an appeal of the commissioner's decision on an amendment. The commissioner's order approving or disapproving an amendment may be appealed to the commission not later than the 60th day after the date of the order.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.02(a), eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 533, Sec. 11, eff. Sept. 1, 2003.

Sec. 122.012. PLACE OF BUSINESS. (a) A credit union shall maintain on file with the department a statement specifying the street and post office address of the credit union's principal place of business.

(b) A credit union shall provide the commissioner with written notice not later than the 30th day before the date that the credit union establishes additional offices or service facilities. A new office or service facility must be reasonably necessary to provide services to the credit union's members. The credit union shall additionally notify the commissioner in writing not later than the 10th business day after the date that the new office or service facility begins operating. For purposes of this subsection, an unmanned teller machine is not considered a service facility.

(c) The commission by rule may prescribe what constitutes an office or service facility.

(d) In accordance with rules adopted by the commission and after notifying the commissioner in writing, a credit union may close any office or service facility, provided that the credit union designates and maintains an office as its principal place of business in this state.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 157, Sec. 7, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 5, eff. September 1, 2013.

Sec. 122.013. FOREIGN CREDIT UNIONS. (a) A foreign credit union may do business in this state if it is organized in a state or country that allows any credit union organized under this subtitle to do business in that state or country.

(b) A foreign credit union doing business in this state is subject to rules adopted under this subtitle and any additional commission requirement.

(c) The commissioner may suspend or revoke a foreign credit union's authority to do business in this state if the commissioner finds that the foreign credit union:

(1) has failed to conduct its business in this state in a manner consistent with the laws of this state;

(2) is in an unsafe or unsound condition;

(3) refuses to comply with an order of the commissioner;

(4) refuses to comply with a request by the commissioner to review the books and records of the credit union; or

(5) has not met or does not meet a requirement imposed by commission rules.

(d) The commission may require a foreign credit union operating in this state to submit periodic reports. The required reports shall be provided by the foreign credit union or by the credit union supervisory agency having primary responsibility for that credit union. Any reporting requirements prescribed by the commission under this subsection must be consistent with the reporting requirements applicable to credit unions and appropriate for the purpose of enabling the commissioner to regulate credit unions.

(e) A foreign credit union from a jurisdiction that allows a credit union to exercise additional powers and authorities not granted in this state may not exercise any of those powers or authorities in this state until the foreign credit union requests and obtains permission from the commissioner to exercise those powers or authorities. If the commissioner determines that there are no safety and soundness concerns, the commissioner shall approve the request

and shall publish the powers or authorities granted in the manner authorized by Section 15.4041 or 15.4042 for the issuance of an interpretive statement or an opinion. When approved, those powers or authorities shall be available to all credit unions authorized to engage in business under this subtitle.

(f) A foreign credit union may not use this section to alter or negate the application to the credit union of any law of this state regarding:

(1) permissible interest rates;

(2) loan fees; or

(3) licensing or regulatory requirements that relate to insurance, securities, marketing or sales activities, or real estate development and that are administered by an agency of this state.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 157, Sec. 8, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 533, Sec. 12, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 6, eff. September 1, 2013.

Sec. 122.0131. TEMPORARY FOREIGN CREDIT UNION OFFICE. If a state contiguous to this state experiences an emergency, on a request by that state's credit union regulatory agency, the commissioner may authorize one or more credit unions located in that state to open temporary offices in this state to more promptly restore credit union services to their members. The commissioner shall issue an order permitting the temporary office and specifying the period the office may remain open. On a finding that the conditions requiring the temporary office continue to exist, the commissioner may extend the period the office may remain open. A credit union may convert a temporary office authorized under this section to a permanent location and operate as a foreign credit union if it qualifies to do business in this state as a foreign credit union under Section 122.013 and commission rules.

Added by Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 7, eff. September 1, 2013.

Sec. 122.014. UNDERSERVED-AREA CREDIT UNION. (a) In this section, "secondary capital account" means a nontransactional account in an amount greater than $100,000 as established by the commission that is:

(1) owned by a person other than an individual; and

(2) subordinated to other creditors.

(b) A credit union may apply to the commissioner for the designation of the credit union as an underserved-area credit union.

(c) The commissioner may designate a credit union as an underserved-area credit union only if:

(1) at least 50 percent of a substantial and well-defined segment of the credit union's members or potential members who are at least 15 years of age earn not more than 80 percent of the state or national household median income, whichever is higher;

(2) the credit union submits an acceptable written strategic plan for marketing to and serving the segment described by Subdivision (1); and

(3) the credit union submits other information and satisfies other criteria as may reasonably be required by the commissioner.

(d) In addition to the powers and authorities granted to credit unions under this subtitle or otherwise, an underserved-area credit union may:

(1) issue secondary capital accounts to members or nonmembers of the credit union on the filing of an application with and the advance approval of the commissioner; and

(2) accept shares and deposits from nonmembers.

(e) The commission may adopt rules for the organization and operation of underserved-area credit unions, including rules requiring disclosures to purchasers of secondary capital accounts and other rules concerning those accounts.

Added by Acts 2003, 78th Leg., ch. 533, Sec. 13, eff. Sept. 1, 2003.

SUBCHAPTER B. ADMINISTRATION

Sec. 122.051. MEMBERSHIP. (a) A person may be a member of a credit union only if the person is an incorporator or other person who:

(1) shares a definable community of interest, in accordance

with the credit union's articles of incorporation or bylaws, including a community of interest based on occupation, association, or residence;

(2) has paid an entrance fee or membership fee, or both, as required by the bylaws;

(3) has complied with the minimum share, including membership share, requirements or other qualifying account requirements established by the board; and

(4) has complied with any other requirement of the articles of incorporation and bylaws.

(b) The state acting through the comptroller as administrator of the state's deferred compensation program or a political subdivision acting through an appropriate officer as administrator of the political subdivision's deferred compensation program may be a member of a credit union for purposes of funding a deferred compensation program. The state or a political subdivision funding a deferred compensation program is not required to pay an entrance fee.

(c) A member who leaves the field of membership may retain membership in the credit union under reasonable board standards.

(d) In this subsection, "good cause" includes the act of physically or verbally abusing a credit union member or employee. A person's membership in a credit union may be terminated or suspended for good cause or for not maintaining membership requirements, under the conditions and in accordance with the procedures provided in the bylaws. A credit union may also discontinue providing any or all services to a member for good cause without terminating or suspending the person's membership. Termination or suspension of a person's membership in the credit union or discontinuing services does not relieve the person from any outstanding obligations owed to the credit union.

(e) Two or more persons within the credit union's field of membership who have jointly subscribed for one or more share or deposit accounts under a joint account and who have complied with all membership requirements may each be admitted to membership.

(f) A credit union authorized to engage in business under this subtitle may accept as a member any other credit union organized or chartered under the laws of this or another state or of the United States. Those credit union members are not entitled to any voting privileges.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 14, eff. Sept. 1, 2003.

Sec. 122.052. MEETINGS OF MEMBERS; VOTING. (a) Members of a credit union shall hold an annual or special meeting at the time and place and in the manner provided by the bylaws.

(b) In determining a question requiring action by the members, each member may cast only one vote, regardless of the number of shares the member holds.

(c) The board may authorize voting by mail or by electronic means. Mail and electronic balloting shall be conducted in accordance with commission rules.

(d) A member that is not an organization may not vote by proxy. A member that is an organization may be represented by and vote through a designated representative who is authorized, in writing, by the organization's governing body to represent the organization.

(e) The credit union's bylaws may establish a minimum age requirement to vote.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 15, eff. Sept. 1, 2003.

Sec. 122.053. BOARD OF DIRECTORS; TERMS AND DUTIES. (a) A board of at least five members shall direct the business and affairs of a credit union.

(b) The membership of the credit union shall elect the board at an annual membership meeting, from the membership, and in the manner provided by the bylaws. A board member shall hold office until a successor is qualified and elected or appointed.

(c) A director shall take and subscribe to an oath or affirmation that the director:

(1) will diligently and honestly perform the director's duties in administering the credit union's affairs;

(2) although the director may delegate the performance of those duties, remains responsible for the performance of the duties;

(3) will not knowingly violate or willingly permit the violation of an applicable law; and

(4) will exercise the care and diligence reasonable and

necessary to administer the affairs of the credit union in a safe and sound manner.

(d) The bylaws shall prescribe the directors' terms and the board's duties. A term may not exceed three years. A director may serve more than one term.

(e) The board shall meet at least once each month.

(f) A director may not vote by proxy. A director may participate in and act at any meeting of the board by means of electronic communications equipment through which all persons participating in the meeting can communicate with each other. Participation in a meeting in the manner authorized by this subsection constitutes attendance at a meeting.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 16, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 8, eff. September 1, 2013.

Sec. 122.054. QUALIFICATION OF DIRECTORS. (a) The commission by rule shall establish qualifications for a director. The rules must provide that a person may not serve as director if the person:

(1) has been convicted of a criminal offense involving dishonesty or breach of trust;

(2) is not eligible for coverage under the blanket bond required by Section 122.063 and rules adopted under this subtitle; or

(3) has defaulted on payment of a voluntary obligation to the credit union or has otherwise caused the credit union to incur a financial loss.

(b) The president or an employee of a credit union may not serve as director of the credit union unless permitted by the credit union's bylaws. If the bylaws permit the president or an employee to serve on the board, the bylaws must require that persons serve on the board so that the president and employees of the credit union never constitute a majority of the board.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 17, eff. Sept. 1, 2003.

Sec. 122.055. VACANCIES; REMOVAL. (a) The office of a director becomes vacant if the director dies, resigns, is removed, has been absent from more meetings than the total number of absences permitted by commission rule, or does not possess or maintain the qualifications required to serve on the board.

(b) Unless the bylaws provide otherwise, the remaining directors by majority vote shall fill a vacancy, regardless of whether the remaining directors constitute a quorum. A director elected by the board to fill a vacancy holds office until the next annual membership meeting, at which the position shall be filled for the remainder of the unexpired term by vote of the members.

(c) A director may be removed from office according to the removal procedure provided by the bylaws.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 18, eff. Sept. 1, 2003.

Sec. 122.056. HONORARY OR ADVISORY DIRECTORS. (a) The board may appoint not more than six individuals to serve at the board's pleasure as honorary or advisory directors to advise and consult with the board and otherwise aid the board in carrying out the board's duties and responsibilities.

(b) An honorary or advisory director:

(1) need not be eligible for membership in the credit union;

(2) is not a member of the board; and

(3) is not entitled to vote on a matter before the board.

(c) An honorary or advisory director may participate in any board deliberation. Except as otherwise provided by Section 125.402(d), an honorary or advisory director shall hold in confidence all information the director receives about a credit union during the director's service.

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

Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 9, eff. September 1, 2013.

Sec. 122.057. OFFICERS; EXECUTIVE COMMITTEE. (a) At the

annual organizational meeting, the board shall elect from its membership a chairman, vice chairman, treasurer, and secretary. The offices of treasurer and secretary may be held by the same individual.

(b) An officer elected under Subsection (a):

(1) serves a one-year term or until the officer's successor is elected and qualified; and

(2) has the duties the bylaws prescribe.

(c) The board may appoint from its membership an executive committee of at least three persons to exercise, between board meetings, authority specifically delegated by the board under conditions specified by the board. At each board meeting, the executive committee shall report to the board regarding any meeting held or action taken by the committee between board meetings.

(d) The bylaws may establish a minimum age requirement to hold office in the credit union.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 19, eff. Sept. 1, 2003.

Sec. 122.058. CHIEF EXECUTIVE OFFICER. (a) The board may employ, elect, or appoint a president, who is the chief executive officer in charge of operations.

(b) The president may be a board member but may not be chairman, vice chairman, or secretary of the credit union. The president serves at the board's pleasure.

(c) Subject to board guidelines, the president shall appoint or employ, and may discharge, any other officer or employee the president considers necessary to operate the credit union. The president shall prescribe the title of an officer or employee appointed or employed under this subsection.

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

Sec. 122.059. DELEGATION OF MANAGEMENT AND LOAN APPROVAL AUTHORITY. (a) Without written approval of the commissioner, a credit union may not:

(1) contract with an individual who is not an officer, director, or employee of the credit union or with an organization for

the provision of the management of the credit union; or

(2) delegate to an individual who is not an officer, director, or employee of the credit union or to an organization the authority to manage the credit union.

(b) The board may delegate all or part of its power to approve or disapprove a loan to a credit committee, one or more other committees, or one or more individuals.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 20, eff. Sept. 1, 2003.

Sec. 122.060. CERTIFICATE OF ELECTION. (a) A credit union shall submit to the commissioner, in a form approved by the department, a certificate of election that provides the name and address of each officer, director, and committee member elected or appointed. The certificate must be filed within the time prescribed by the commissioner.

(b) The commission by rule may authorize the commissioner to obtain other confidential reports relating to a newly elected or appointed officer, director, or committee member.

(c) The commissioner may accept a form prescribed by an insuring organization that contains substantially similar information as the certificate of election in lieu of the certificate. The acceptance of such a form does not limit the commissioner's power to require additional information concerning a newly elected or appointed officer, director, or committee member.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 21, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 10, eff. September 1, 2013.

Sec. 122.061. CONFLICTS OF INTEREST. (a) While serving as a director, honorary director, advisory director, committee member, officer, or employee of a credit union, a person may not:

(1) participate, directly or indirectly, in the deliberation on or determination of a question affecting the person's pecuniary interest or the pecuniary interest of a member of the

person's immediate family or of a partnership, association, or corporation, other than the credit union, in which the person is directly or indirectly interested; or

(2) become employed by, engage in, or own an interest in a business or professional activity that the person could reasonably expect to:

(A) require or induce the person to disclose confidential information acquired because of the person's office or employment in the credit union; or

(B) impair the person's independence or judgment in the performance of the person's duties or responsibilities to the credit union.

(b) An interest only as a member of the credit union that is shared in common with all other members is not a pecuniary interest within the meaning of Subsection (a)(1).

(c) In this section, "member of a person's immediate family" means a person's spouse or another person living in the person's household.

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

Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 11, eff. September 1, 2013.

Sec. 122.062. COMPENSATION. A person may not receive compensation for serving as a director, honorary director, advisory director, or committee member of a credit union, except that the person may be:

(1) provided with reasonable health, life, accident, liability, or similar insurance protection;

(2) reimbursed for necessary expenses incurred in the performance of the person's duties; and

(3) paid the fees and reimbursed for other expenditures authorized by commission rules.

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

Sec. 122.063. BOND. The board shall purchase from a surety company authorized to do business in this state a blanket surety or

security bond covering each director, honorary director, advisory director, officer, employee, member of an official committee, attorney, or other agent of the credit union as required by commission rule.

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

Sec. 122.064. INDEMNIFICATION. A credit union may elect to indemnify a director, officer, employee, or agent of the credit union and to purchase insurance as if the credit union were an "enterprise" as defined by Section 8.001, Business Organizations Code, under and subject to the credit union's bylaws and written policy. A credit union may not provide any indemnification or insurance that would not be permissible under Chapter 8, Business Organizations Code, but may elect to impose the credit union's own limitations on indemnification.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 12, eff. September 1, 2013.

SUBCHAPTER C. OPERATIONS AND FINANCES

Sec. 122.101. CALL REPORTS. (a) A credit union shall prepare a quarterly call report, in a manner approved by the department, that states the credit union's financial condition. The commissioner may require a credit union to file additional financial reports.

(b) The credit union must submit the call report on or before the due date prescribed by the department. If a credit union does not submit a report by the due date, the commissioner shall charge a late fee in an amount set by the commission for each day the report remains unfiled. The commissioner for good cause shown may waive all or part of the late fee.

(c) A credit union that does not file a report on or before the date it is due is subject to sanctions provided by this chapter and Chapter 126.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 157, Sec. 9, eff. Sept. 1, 1999; Acts

2003, 78th Leg., ch. 533, Sec. 22, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 13, eff. September 1, 2013.

Sec. 122.102. FINANCIAL REPORTING; AUDITS. (a) A credit union shall use the financial reporting forms and observe the accounting principles prescribed by the commission.

(b) The board shall:

(1) make a comprehensive annual audit of the credit union's books and affairs, in accordance with established principles and commission rules;

(2) submit a summary of the audit report to the credit union's members at the next annual meeting; and

(3) make a supplementary audit or examination as the board considers necessary or the commissioner requires.

(c) The commission by rule may require a verification of members' accounts with the credit union's records.

(d) If the commissioner, by examination or other credible evidence, finds that the board is not complying with this section or a rule adopted under this section, the commissioner may appoint an independent person from outside the credit union and its members to perform an audit. The credit union shall pay the cost of the audit.

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

Sec. 122.103. EQUITY CAPITAL. A credit union's equity capital consists of:

(1) retained earnings;

(2) appropriated retained earnings, including net worth and other reserves;

(3) undivided earnings; and

(4) other forms of capital in accordance with generally accepted accounting principles and approved by the commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 23, eff. Sept. 1, 2003.

Sec. 122.104. NET WORTH RESERVE ALLOCATIONS. (a) The commission by rule shall require a credit union to contribute to and maintain net worth reserves necessary to protect the interests of its members. The rule may:

(1) prescribe the purposes for which the net worth reserves may be used; and

(2) authorize the commissioner to approve other uses.

(b) The credit union's board may establish reserves in addition to the required net worth reserves.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 24, eff. Sept. 1, 2003.

Sec. 122.105. MEMBERSHIP SHARE REDUCTION. A credit union may order a reduction in the membership shares of each of its shareholders if:

(1) the credit union's losses resulting from a depreciation in value of its loans or investments or otherwise exceed its undivided earnings and its reserves, and the estimated value of its assets is less than the total amount due the shareholders;

(2) a majority vote of the credit union's members present at a meeting of members called for that purpose approve the reduction; and

(3) the reduction divides the loss proportionately among the shareholders.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 25, eff. Sept. 1, 2003.

Sec. 122.106. EXEMPTION FROM CERTAIN TAXES. (a) Except as provided by Subsection (b), a credit union is exempt from a franchise or other license tax.

(b) A credit union is not exempt from the franchise tax imposed by Chapter 171, Tax Code, unless the credit union is exempted by that chapter.

(c) The intangible property of a credit union organized under this chapter is not taxable.

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

Sec. 122.107. NOTICE OF AVAILABILITY OF CERTAIN DOCUMENTS. (a) A credit union regulated under this subtitle and Chapter 15 shall give notice to the credit union's members of the availability on request of a member of documents related to the credit union's finances and management, including:

(1) a summary of the most recent annual audit;

(2) the most recent statement of financial condition, such as nonconfidential pages of the quarterly call report provided under Section 122.101;

(3) a copy of IRS Form 990 or its successor; and

(4) any other documents that members are entitled to possess, as determined by the commission.

(b) The notice required by Subsection (a) must be given:

(1) on the credit union's Internet website if the credit union maintains a website; and

(2) in a newsletter twice a year if the credit union distributes a newsletter.

(c) The commission shall adopt reasonable rules to implement this section, including rules prescribing an alternative method for credit unions that do not maintain an Internet website or distribute a newsletter to provide their members with notice of the documents required by Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 17, eff. September 1, 2009.

SUBCHAPTER D. MERGER OR CONSOLIDATION

Sec. 122.151. AUTHORITY TO MERGE OR CONSOLIDATE. (a) A credit union may merge or consolidate with another credit union, under the other credit union's existing articles of incorporation or otherwise, if:

(1) the merger or consolidation is in accordance with commission rules and approved by the commissioner; and

(2) the merger or consolidation takes place under a plan that has been:

(A) agreed to by a majority of the board of each credit union joining in the merger or consolidation; and

(B) approved by a majority of the members of each credit union voting at a meeting of its members called for that purpose.

(b) The commissioner may waive the requirement that the members of each credit union approve the plan.

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

Sec. 122.152. APPLICATION TO MERGE OR CONSOLIDATE. (a) After agreement by the directors and approval by the members, if applicable, of each credit union or federal credit union, the chairman and secretary of each credit union or federal credit union shall execute a certificate of merger or consolidation that:

(1) includes a copy of the resolution or other action by which the board agreed to the merger or consolidation plan; and

(2) states:

(A) the time and place of the board meeting at which the board agreed to the merger or consolidation plan;

(B) the board's vote for and against adoption of the plan;

(C) the time and place of the meeting at which the members approved the plan, if applicable;

(D) the membership's vote for and against approval of the plan, if applicable; and

(E) the name of the surviving credit union.

(b) The merging credit union or a consolidating credit union shall submit the certificates and a copy of the merger or consolidation plan to the commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 26, eff. Sept. 1, 2003.

Sec. 122.153. DECISION BY COMMISSIONER; APPEAL. (a) Subject to Subsection (b), on approving the merger or consolidation, the commissioner shall return the certificates and plan to the merging or consolidating credit unions.

(b) The commissioner may conditionally approve a merger or consolidation. If approval is conditional, the commissioner:

(1) shall state the condition in the order approving the

merger or consolidation; and

(2) may not deliver the approved certificate until the condition has been met.

(c) Notwithstanding any other law, the commissioner may authorize a credit union that is insolvent or is in danger of insolvency to merge or consolidate with another credit union or may authorize a credit union to purchase any of the assets of, or assume any of the liabilities of, another credit union that is insolvent or in danger of insolvency if the commissioner is satisfied that:

(1) an emergency requiring expeditious action exists with respect to the credit union that is insolvent or in danger of insolvency;

(2) another option is not reasonably available; and

(3) the public interest would best be served by approval of the merger, consolidation, purchase, or assumption.

(d) If the commissioner disapproves the merger or consolidation or imposes a condition, the merging or consolidating credit unions may appeal the commissioner's decision to the commission in the manner provided by Section 122.007 for an appeal on an application to incorporate a credit union.

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

Sec. 122.1531. CONSIDERATIONS IN DETERMINATION. In determining whether to approve or disapprove the merger or consolidation, the commissioner shall consider the availability and adequacy of financial services in the local community and the effect that the merger or consolidation would have on the local community. The commission by rule shall establish other appropriate criteria that the commissioner must consider in making the determination.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.03(a), eff. Sept. 1, 1999.

Sec. 122.154. PROPERTY, OBLIGATIONS, AND LIABILITIES OF MERGED OR CONSOLIDATED CREDIT UNION. After a merger or consolidation is effected:

(1) the property of the merged or consolidated credit union vests in the surviving credit union without an instrument of transfer

or endorsement; and

(2) the obligations and liabilities of the merged or consolidated credit union are assumed by the surviving credit union.

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

Sec. 122.155. CONSTRUCTION OF SUBCHAPTER. This subchapter shall be construed, when possible, to permit a credit union authorized to do business in this state under other law to merge or consolidate with a credit union authorized to do business under this subtitle.

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

Sec. 122.156. RULES TO ADDRESS CERTAIN PROCEDURES. The rules adopted under this subchapter must specify in detail the procedures that:

(1) a credit union must follow to obtain commissioner approval of a merger or consolidation; and

(2) the commissioner must follow in approving or disapproving the merger or consolidation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.03(a), eff. Sept. 1, 1999.

SUBCHAPTER E. CONVERSION

Sec. 122.201. CONVERSION OF STATE CREDIT UNION TO FEDERAL CREDIT UNION. (a) A credit union organized under the laws of this state may convert to a credit union under the laws of the United States:

(1) on an affirmative vote by a majority of the members voting at a meeting called for that purpose; and

(2) by complying with any rule adopted by the commission to facilitate the conversion.

(b) On the issuance of a charter by the National Credit Union Administration, the credit union:

(1) ceases to be a credit union incorporated under this subtitle; and

(2) is no longer subject to the supervision and regulation of the commissioner and department.

(c) The converted credit union shall file with the commissioner a copy of the charter issued to the credit union by the National Credit Union Administration. Failure to file the required copy of the charter does not affect the validity of the conversion.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 14, eff. September 1, 2013.

Sec. 122.202. CONVERSION OF STATE CREDIT UNION TO OUT-OF-STATE CREDIT UNION. A credit union organized under the laws of this state may convert to a credit union under the laws of another state:

(1) on an affirmative vote by a majority of the members voting at a meeting called for that purpose; and

(2) by complying with any applicable commission rule.

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

Sec. 122.203. CONVERSION OF FEDERAL OR OUT-OF-STATE CREDIT UNION TO STATE CREDIT UNION. A credit union organized under the laws of the United States or of another state may convert to a credit union organized under the laws of this state by complying with:

(1) the requirements of the jurisdiction under which the converting credit union is organized; and

(2) commission rules.

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

SUBCHAPTER F. MISCONDUCT AND ENFORCEMENT

Sec. 122.251. DEFAMATION. (a) A person commits an offense if the person knowingly:

(1) makes, circulates, or transmits to another person a false statement that is derogatory to the financial condition of a credit union with the intent to injure that credit union; or

(2) counsels, aids, procures, or induces another person to

make, circulate, or transmit a false statement that is derogatory to the financial condition of a credit union with the intent to injure that credit union.

(b) An offense under this section is a third degree felony.

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

Sec. 122.252. CONSIDERATION FOR LOAN, INVESTMENT, OR PURCHASE. (a) A person commits an offense if the person:

(1) is a director, honorary director, advisory director, committee member, officer, or employee of a credit union; and

(2) knowingly demands or receives, directly or indirectly, consideration for the credit union's making a specific loan or investment or purchasing an asset.

(b) An offense under this section is a Class A misdemeanor.

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

Sec. 122.253. LOAN TO NONMEMBER. (a) A person commits an offense if the person:

(1) is a director, honorary director, advisory director, committee member, officer, or employee of a credit union; and

(2) knowingly permits a loan to be made to a nonmember or participates in a loan to a nonmember.

(b) An offense under this section is a Class B misdemeanor.

(c) A person who commits an offense described by Subsection (a) is primarily liable to the credit union for the amount illegally loaned. The illegality of the loan is not a defense in an action by the credit union to recover on the loan.

(d) Extending credit to a nonmember as a comaker with a member or extending credit to a nonmember for the sale of property owned by the credit union or for the sale of assets acquired in liquidation or repossession is authorized and is not a loan to a nonmember. Acquiring a promissory note or other asset by a share and deposit guaranty corporation or credit union authorized under Section 15.410, on which a nonmember is liable, is not a loan to a nonmember.

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

Sec. 122.254. FALSE STATEMENTS OR DOCUMENTS; DESTRUCTION OF RECORDS. (a) A person commits an offense if the person, knowingly and with the intent to deceive:

(1) makes a false entry on a record, report, or statement of a credit union; or

(2) in connection with an examination or investigation of a credit union by the commissioner, a deputy commissioner, or the department's authorized examiner, exhibits a false paper, instrument, or security or gives under oath a false answer to a question directly related to the examination or investigation asked the person by the commissioner, the deputy commissioner, or the department's authorized examiner.

(b) A person commits an offense if the person knowingly removes, destroys, or conceals a record of the credit union for the purpose of concealing a fact or information from the commissioner, a deputy commissioner, or the department's authorized examiner.

(c) An offense under this section is a third degree felony.

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

Sec. 122.255. DETERMINATION OF MISCONDUCT. The commissioner may determine that an officer, director, honorary director, advisory director, or employee of a credit union, or the credit union itself, acting by and through an officer, director, honorary director, advisory director, or employee, has:

(1) violated this subtitle, a rule adopted under this subtitle, or another law applicable to a credit union;

(2) violated or refused to comply with a final order of the commissioner or commission;

(3) wilfully neglected to perform an official or legal duty or wilfully committed a breach of trust or fiduciary duty;

(4) committed a fraudulent or questionable practice in the conduct of the credit union's business that endangers the credit union's reputation or threatens its solvency;

(5) refused to submit to examination under oath or to permit examination of the credit union's records and affairs by the commissioner or the commissioner's representative;

(6) failed or refused to authorize and direct another person to permit the commissioner or the commissioner's

representative to examine the credit union's records in the other person's custody after the commissioner has requested the authorization of and direction to the other person;

(7) conducted the credit union's business in an unsafe, unauthorized, or unlawful manner;

(8) concealed, destroyed, removed, or falsified a record related to the credit union's business and affairs;

(9) transacted business while the credit union was in an unsafe or unsound condition;

(10) violated a condition of the credit union's articles of incorporation or of a written agreement with the commissioner or the commission; or

(11) committed a criminal act that is a substantial detriment to the reputation and conduct of the credit union's business.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 27, eff. Sept. 1, 2003.

Sec. 122.256. DETERMINATION LETTER; BOARD MEETING. (a) If the commissioner determines from examination or other credible evidence that a credit union is in a condition that may warrant the issuance of an order under this chapter or Chapter 126, the commissioner may notify the credit union in writing of the commissioner's determination, the requirements the credit union must satisfy to abate the determination, and the time by which the requirements must be satisfied to avert further administrative action. The determination letter must be delivered in person or sent by registered or certified mail, return receipt requested.

(b) If considered necessary, the commissioner may call a meeting of the credit union's board. The directors shall attend the meeting. The commissioner shall present to the board the findings stated in the determination letter and shall demand the discontinuance of any violation or unsafe or unsound practice found.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 28, eff. Sept. 1, 2003.

Sec. 122.257. CEASE AND DESIST ORDER FOR CREDIT UNIONS. (a)

If the commissioner makes a finding listed in Section 122.255 and determines that an order to cease and desist is necessary and in the best interest of the credit union involved and its depositors, creditors, and members, the commissioner may serve on the credit union, its board, and each offending person an order to cease and desist from a violation or practice specified in the order and to take affirmative action that the commissioner considers necessary to correct a condition resulting from a violation or unsafe or unsound practice found.

(b) The order must:

(1) be in writing;

(2) be served:

(A) at the meeting called under Section 122.256 or not later than the 30th day after the date of that meeting; and

(B) by certified or registered mail, addressed to the credit union at the last address of its principal office as shown by department records, or by delivery to an officer or director of the credit union; and

(3) unless the order is effective immediately on service as provided by Subsection (d), state the effective date of the order, which may not be before the 10th day after the date the order is served.

(c) Service by mail is complete on deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.

(d) A cease and desist order is effective immediately on service if the commissioner finds that:

(1) the solvency of the credit union is endangered;

(2) there is a continuing violation of this subtitle or a rule adopted under this subtitle; or

(3) there is a threat of immediate and irreparable harm to the public or the credit union or its depositors, creditors, or members.

(e) The order is final unless, not later than the 10th day after the date the order is served, the credit union files with the commissioner written notice of appeal that includes a certified copy of the board resolution.

(f) A copy of the order shall be entered in the minutes of the board meeting. The directors shall certify to the commissioner in

writing that each director has read the order.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 29, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 18, eff. September 1, 2009.

Sec. 122.2575. CEASE AND DESIST ORDER FOR OTHER PERSONS. (a) If it appears to the commissioner that a person who is not authorized to engage in business under this subtitle or the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.) is violating this subtitle, a rule adopted under this subtitle, or another state statute or rule relating to the regulation of credit unions, the commissioner may issue without notice and hearing an order to cease and desist from continuing a particular action to enforce compliance with the applicable state statute or rule relating to the regulation of credit unions. The order must contain a reasonably detailed statement of the fact on which the order is made.

(b) If a person against whom an order under this section is made requests a hearing, the commissioner shall set and give notice of a hearing before the commissioner or a hearings officer. The hearing shall be governed by Chapter 2001, Government Code.

(c) An order under this section becomes final unless the person to whom the order is issued requests a hearing not later than the 30th day after the date the order is issued. If a hearing has not been requested not later than the 30th day after the date the order is made, the order is considered final and nonappealable.

Added by Acts 2009, 81st Leg., R.S., Ch. 695 (H.B. 2735), Sec. 19, eff. September 1, 2009.

Sec. 122.258. REMOVAL ORDER. (a) The commissioner by order may remove or prohibit a person who is a current or former officer, director, manager, or employee of a credit union from office, employment, or further participation in the affairs of a credit union if the commissioner by examination or other credible evidence:

(1) finds that:

(A) the person has continued a violation or practice

previously charged and found by the commissioner after issuance of a determination letter under Section 122.256 or a cease and desist order under Section 122.257; and

(B) removal or prohibition is necessary and in the best interest of the credit union and its depositors, creditors, and members; or

(2) makes a finding listed in Section 122.255 and determines that removal or prohibition of the person is immediately necessary because the person has committed or is about to commit:

(A) a fraudulent or criminal act involving the conduct of the business of the credit union;

(B) an act that may cause the credit union to become insolvent or to be placed in imminent danger of insolvency; or

(C) an act that otherwise threatens immediate and irreparable harm to the public or the credit union or its members, depositors, or creditors.

(b) The removal order must:

(1) state with reasonable certainty the grounds for removal; and

(2) be promptly served on the person removed and on the credit union in the manner provided by Section 122.257 for service of a cease and desist order.

(c) On issuance of the order, the person has no right, duty, or authority of office or employment in the credit union. After the order becomes final, the person removed or prohibited may not hold office in, be employed by, or participate in the affairs of any credit union without the prior written approval of the commissioner. The order is final as of the date of issuance unless the person removed or prohibited or the credit union, as evidenced by a certified copy of the board resolution, files written notice of appeal with the commissioner not later than the 10th day after the day the removal order is served.

(d) A copy of the removal order shall be entered in the board minutes. An officer shall acknowledge receipt of the order and certify to the commissioner that each person named in the removal order has been removed from office or employment.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 30, eff. Sept. 1, 2003.

Sec. 122.259. HEARING ON APPEAL OF PROPOSED ORDER. (a) If the credit union or a person removed from office or employment files a notice of appeal of a cease and desist order or a removal order, the commissioner shall set a time and place for the commission to hear the appeal in accordance with commission rules.

(b) The filing of an appeal does not suspend a removal order or cease and desist order.

(c) At the conclusion of the hearing, the commission may vacate, affirm, or modify the commissioner's order and may order that appropriate action be taken.

(d) A cease and desist order or a removal order is final on completion of an appeal or otherwise as provided by this subchapter.

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

Sec. 122.260. ADMINISTRATIVE PENALTY; INJUNCTION. (a) If a credit union or other person designated in a final order under this subchapter does not comply with the order, the commissioner, after giving notice, may assess an administrative penalty against the credit union, the designated person, or both, in an amount of not less than $100 or more than $10,000 each for each day of the violation of the order.

(b) The credit union may not reimburse or indemnify a person for any part of the administrative penalty.

(c) The commissioner may bring suit for injunction or to collect the administrative penalty in a district court of Travis County. In the suit, a certificate by the commissioner showing a failure to pay an administrative penalty is prima facie evidence of:

(1) the imposition of the penalty or the delinquency of the stated penalty amount; and

(2) compliance by the department with the law relating to the computation and imposition of the penalty.

(d) The attorney general is entitled to recover reasonable attorney's fees from the credit union or the designated person, or both, if the attorney general prevails in a judicial action necessary for collection of the administrative penalty.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 31, eff. Sept. 1, 2003.

Sec. 122.261. CONFIDENTIALITY. (a) A determination letter, a cease and desist order, a removal order, each copy of a notice or correspondence, and all other documents or records relating to an order or determination letter issued under this subchapter are confidential and are not subject to public disclosure except in an action authorized by this subtitle or other authority.

(b) The commissioner may disclose the information described by Subsection (a) to a share and deposit guaranty corporation or credit union or to a department, agency, or instrumentality of this state, another state, or the United States if the commissioner determines the disclosure is necessary or proper for the enforcement of the laws of this state or the United States.

(c) The commissioner may release information regarding the existence of a final order to the public if the 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 1999, 76th Leg., ch. 157, Sec. 10, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 533, Sec. 32, eff. Sept. 1, 2003.

CHAPTER 123. GENERAL POWERS

SUBCHAPTER A. GENERAL POWERS

Sec. 123.001. GENERAL POWERS. A credit union may exercise any power necessary or appropriate to accomplish the purposes for which it is organized and any power granted a corporation authorized to do business in this state, including any power specified in this chapter.

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

Sec. 123.002. INCIDENTAL POWERS. A credit union may exercise any right, privilege, or incidental power necessary or appropriate to exercise its specific powers and to accomplish the purposes for which it is organized.

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

Sec. 123.003. ENLARGEMENT OF POWERS. (a) A credit union may engage in any activity in which it could engage, exercise any power it could exercise, or make any loan or investment it could make, if it were operating as a federal credit union.

(b) Notwithstanding any other law, and in addition to the powers and authorities conferred under Subsection (a), a credit union has the powers or authorities of a foreign credit union operating a branch in this state if the commissioner finds that exercise of those powers or authorities is convenient for and affords an advantage to the credit union's members and maintains the fairness of competition and parity between the credit union and any foreign credit union. A credit union does not have the field of membership powers or authorities of a foreign credit union operating a branch in this state.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 87, Sec. 3, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 533, Sec. 33, eff. Sept. 1, 2003.

SUBCHAPTER B. OPERATIONAL POWERS

Sec. 123.101. CONTRACTS. A credit union may make contracts.

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

Sec. 123.102. POWER TO SUE AND DEFEND. A credit union may sue or be sued in the name of the credit union.

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

Sec. 123.103. PURCHASE AND SALE OF PROPERTY. Subject to commission rules, a credit union may purchase, hold, lease, or dispose of property necessary or incidental to the operation or purpose of the credit union.

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

Sec. 123.104. MEMBERSHIP IN OTHER ORGANIZATION; OPERATION AS

CENTRAL CREDIT UNION. A credit union may:

(1) be a member of:

(A) another credit union organized under this subtitle or other law; and

(B) another organization approved by the board; or

(2) operate, with the commissioner's approval, as a central credit union.

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

Sec. 123.105. FEES. (a) A credit union may collect a fee, determined by the board, for services and administrative costs, including a fee for a check or draft that is returned because it is drawn against a closed account or an account containing insufficient or uncollected money, because of a stop payment order, or for another similar reason.

(b) A fee under this section is an administrative expense. The fee is in addition to interest authorized by law and is not a part of interest collected or agreed to be paid on a loan.

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

Sec. 123.106. CHANGE OF LOCATION. (a) A credit union changing the location of its principal place of business or any additional office or service facility shall notify the commissioner in writing of the new location and the scheduled or effective date of the change.

(b) The credit union must submit notice to the commissioner not later than the 30th day before the scheduled or effective date of the change. The commissioner may waive or reduce the timing of the notice requirement under this subsection.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 34, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 15, eff. September 1, 2013.

Sec. 123.107. INSURANCE FOR MEMBERS. A credit union may purchase or otherwise provide insurance for the benefit or convenience of its members in accordance with applicable law or rules adopted by the commission.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 157, Sec. 11, eff. Sept. 1, 1999.

Sec. 123.108. DONATIONS. A credit union may donate to a nonprofit, civic, charitable, or community organization as authorized by the board.

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

Sec. 123.109. SEAL. A credit union may adopt and use a common seal and may alter its seal at any time.

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

Sec. 123.110. RECORDS. (a) A credit union may:

(1) copy any record kept by the credit union; and

(2) dispose of the original record in accordance with commission rules.

(b) A copy of a record is considered an original record for any purpose, including admissibility in evidence as an original record before any court or administrative agency for the purpose of the copy's admissibility in evidence.

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

Sec. 123.111. RIGHT TO ACT TO MITIGATE OR AVOID LOSS. This subtitle does not prohibit a credit union from investing its money, operating a business, managing or dealing in property, or taking any other action at any time that is reasonably necessary to avoid or mitigate a loss on a loan or on an investment made or obligation created in good faith and in the usual course of the credit union's business, as authorized by this subtitle or a rule adopted by the

commission.

Added by Acts 2003, 78th Leg., ch. 533, Sec. 35, eff. Sept. 1, 2003.

SUBCHAPTER C. FINANCIAL POWERS

Sec. 123.201. POWER TO BORROW OR LEND. (a) A credit union may:

(1) lend its funds, or engage in any other type of financing transaction authorized by applicable law or rules adopted by the commission; and

(2) borrow money from any source, subject to Subsection (b).

(b) A credit union may not incur a debt without the commissioner's prior approval if the debt will cause the debt of the credit union, including a deposit of a nonmember financial institution, to exceed an amount equal to 500 percent of the credit union's unencumbered reserves and undivided earnings.

(c) The commissioner shall grant or deny a request for approval under Subsection (b) not later than the 10th day after the date on which the request is made.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 157, Sec. 12, eff. Sept. 1, 1999.

Sec. 123.202. RECEIPT, TRANSFER, AND PAYMENT OF MONEY. A credit union may:

(1) receive and disburse money;

(2) receive a payment on a share or deposit; and

(3) provide for the transfer or withdrawal of money from an account by the means and through the payment systems that the board determines best serve the convenience and needs of members and depositors.

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

Sec. 123.203. ACCEPTANCE OF MONEY FOR DEPOSIT FROM ANOTHER ENTITY. A credit union may accept money for deposit by a savings and loan association, a savings association, the savings department of a

bank, a commercial bank, a savings bank, a trust company, an insurance company, or any intermediary or other person managing or holding money on behalf of the credit union or any of the credit union's members or depositors.

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

Sec. 123.204. ACTION AS AGENT OR DEPOSITORY OF UNITED STATES OR OTHER GOVERNMENTAL ENTITY. A credit union may act as agent or depository of and accept for deposit the money of:

(1) the United States or an agent or instrumentality of the United States;

(2) this or another state; or

(3) a political subdivision of this or another state, including:

(A) a municipality;

(B) a county;

(C) a school district; or

(D) another taxing authority.

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

Sec. 123.205. INVESTMENTS AND SECURITIES. (a) In accordance with commission rules, a credit union may:

(1) develop and offer investment programs to its members and depositors; or

(2) act as agent for its members and depositors in the purchase, sale, or other disposition of a security, an interest in a mutual fund, or an interest or participation in any other type of investment.

(b) A credit union may issue and sell securities in connection with an investment program developed and offered under Subsection (a)(1).

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

Sec. 123.206. ACTION AS FISCAL OR TRANSFER AGENT; TRANSFER OF CERTAIN INSTRUMENTS; SIGNATURES. A credit union may:

(1) act as fiscal agent or transfer agent;

(2) transfer a registered and countersigned certificate of stock, bond, or other evidence of indebtedness; or

(3) guarantee a signature.

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

Sec. 123.207. FIDUCIARY POWERS. A credit union may:

(1) act, under court order or appointment, as guardian, receiver, trustee, executor, or administrator without giving bond;

(2) receive an investment from a person acting as a guardian, receiver, trustee, executor, or administrator under the Estates Code or Subtitle B, Title 9, Property Code;

(3) act as depository for money paid to a court or constituting the estate of a deceased person, a minor, or an incompetent;

(4) accept, execute, and administer a trust as trustee;

(5) accept funds or money for deposit by a fiduciary, trustee, receiver, guardian, executor, or administrator; or

(6) act as custodian or trustee of a pension or profit-sharing plan, including an individual retirement account or a pension fund of a self-employed individual or of the sponsor of a credit union.

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. 20.012, eff. September 1, 2015.

Sec. 123.208. DIVIDENDS AND INTEREST. (a) A credit union may:

(1) declare and pay a dividend on a share;

(2) contract for and pay interest on a deposit; or

(3) refund interest to a borrower.

(b) A dividend or interest may be paid at a rate and on the conditions that the board authorizes.

(c) The commissioner may restrict the payment of a dividend:

(1) if the commissioner issues a cease and desist order under Section 122.257; or

(2) as necessary to protect the member's interests and

preserve the solvency of the credit union as authorized by commission rule.

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

Sec. 123.209. TRANSFER SYSTEM. A credit union may establish, operate, or participate in a system that allows the transfer of credit union money or the shares or deposits of its members by electronic or other means, including a clearinghouse association, a data processing or other electronic network, the Federal Reserve System, or any other government payment or liquidity program.

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

Sec. 123.210. SALE OF CERTAIN INSTRUMENTS OR SECURITIES; FEE. A credit union may:

(1) collect, receive, and disburse money:

(A) in connection with the sale of a traveler's check, money order, cashier's check or draft, treasurer's draft, similar instrument, or security of any type; or

(B) for another purpose that may provide a benefit or convenience for its members; and

(2) collect a fee for those services.

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

Sec. 123.211. CERTIFICATES OF INDEBTEDNESS. The commission by rule may authorize a credit union to issue certificates of indebtedness that are subordinated to all other claims of credit union creditors.

Added by Acts 2003, 78th Leg., ch. 533, Sec. 36, eff. Sept. 1, 2003.

Sec. 123.212. CHECK AND MONEY TRANSFER SERVICES. A credit union may sell to a person within its field of membership negotiable checks, money orders, and other similar money transfer instruments or services and may also cash checks and money orders for a person

within its field of membership for a fee.

Added by Acts 2003, 78th Leg., ch. 533, Sec. 37, eff. Sept. 1, 2003.

CHAPTER 124. LOANS AND INVESTMENTS

SUBCHAPTER A. GENERAL PROVISIONS CONCERNING LOANS TO MEMBERS

Sec. 124.001. AUTHORIZATION. A credit union may make a loan to a member:

(1) in accordance with rules adopted by the commission;

(2) for a purpose the credit union approves; and

(3) on security and terms the credit union requires.

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

Sec. 124.002. LIMITATIONS ON INTEREST RATES. The interest rate on a loan to a member may not exceed:

(1) 1-1/2 percent per month on the unpaid balance;

(2) 28 percent a year to the extent that federal credit unions are permitted to charge that rate; or

(3) a higher rate authorized by law, including a rate authorized by Chapter 303.

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

Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 16, eff. September 1, 2013.

Sec. 124.003. LIMITATIONS ON LOANS. A credit union may not make a loan to a member or a business interest of the member if the loan would cause the aggregate amount of loans to the member and the member's business interests to exceed:

(1) an amount equal to 10 percent of the credit union's total assets; or

(2) a lesser amount established by commission rule.

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

Sec. 124.004. WRITTEN INSTRUMENT REQUIRED. A credit union loan must be evidenced by a written instrument.

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

Sec. 124.005. APPLICABILITY OF OTHER LAW. Subtitle B, Title 4, does not apply to a credit union loan or extension of credit unless the agreement that evidences the transaction specifically provides otherwise.

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

SUBCHAPTER B. OPEN-END CREDIT PLAN OR LINE OF CREDIT

Sec. 124.051. OPEN-END CREDIT PLAN. A credit union may enter into a written agreement with a member under which:

(1) the member is allowed to borrow money from time to time; and

(2) interest may from time to time be computed on the unpaid balance.

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

Sec. 124.052. LINE OF CREDIT. A credit union may approve in advance a line of credit and grant advances to a member within the limit of the extension of credit.

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

Sec. 124.053. ADDITIONAL LOAN APPLICATION NOT REQUIRED. An additional loan application is not required under an open-end credit plan under Section 124.051 or line of credit under Section 124.052 if the aggregate obligation does not exceed a limit of the extension of credit the credit union establishes.

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

SUBCHAPTER C. LOAN EXPENSES

Sec. 124.101. BORROWER PAYMENT OF LOAN EXPENSES. A credit union may require a member to pay all reasonable expenses and fees incurred in connection with making, closing, disbursing, extending, readjusting, or renewing a loan, whether or not those expenses or fees are paid to third parties.

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

Sec. 124.102. COLLECTION OF LOAN EXPENSES. A payment authorized by Section 124.101 may be:

(1) collected by the credit union and:

(A) retained by the credit union; or

(B) paid to a person rendering a service in connection with the payment; or

(2) paid directly by the member to the third party to whom it is payable.

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

Sec. 124.103. CHARACTER OF EXPENSE OR FEE. An expense or fee authorized by Section 124.101 is not interest.

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

SUBCHAPTER D. LOAN PAYMENTS

Sec. 124.151. PREPAYMENT PRIVILEGE. A loan may be prepaid in whole or in part, without penalty, during regular working hours on any day on which the credit union is open for business, except as provided by Section 124.152.

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

Sec. 124.152. CONDITIONS FOR PREPAYMENT OF LOAN SECURED BY REAL PROPERTY. A credit union may require a partial prepayment that is made on a loan secured by a lien or mortgage on or other type of security interest in real property to be made:

(1) on the date monthly installments are due; and

(2) in the amount of that part of one or more monthly installments that would be applicable to principal.

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

Sec. 124.153. PENALTY FOR LATE PAYMENT. (a) A credit union, in accordance with its bylaws, may charge a member a penalty when a loan payment is past due.

(b) A credit union may charge only one penalty on each past due payment.

(c) A penalty under this section is not interest.

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

SUBCHAPTER E. LOANS TO DIRECTORS, EMPLOYEES, AND CREDIT COMMITTEE MEMBERS

Sec. 124.201. AUTHORIZATION. Only if done in accordance with limitations imposed by Section 124.202, a credit union may make a loan or extend a line of credit to:

(1) a director, senior management employee, or member of the credit committee; or

(2) the immediate family of the director, senior management employee, or member of the credit committee.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 38, eff. Sept. 1, 2003.

Sec. 124.202. CONDITIONS OF LOANS. A loan or extension of a line of credit under Section 124.201:

(1) must comply with this subtitle and rules adopted under this subtitle with respect to loans to other borrowers;

(2) may not be on terms more favorable than those extended to other borrowers; and

(3) must be approved by the board before the credit union makes or agrees to make the loan if the aggregate amount of the loan and other outstanding loans to the person, the person's business interests, and the person's immediate family is greater than the sum

of:

(A) $10,000 or a higher amount established by commission rule; and

(B) the amount of the shares and deposits pledged for the loan.

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

Sec. 124.203. AUTHORIZATION TO ACT AS COMAKER, GUARANTOR, OR ENDORSER. A credit union may permit a director, senior management employee, or member of the credit committee to act as comaker, guarantor, or endorser of a loan to a member only in accordance with limitations imposed by Section 124.204.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 39, eff. Sept. 1, 2003.

Sec. 124.204. PRIOR APPROVAL REQUIRED. The board must give its approval before the credit union permits a director, senior management employee, or member of the credit committee to act as comaker, guarantor, or endorser of a loan to a member if the amount of the loan or aggregate of outstanding loans to the comaker, guarantor, or endorser is greater than the sum of:

(1) $10,000 or a higher amount established by commission rule; and

(2) the amount of the shares and deposits pledged for the loan.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 40, eff. Sept. 1, 2003.

SUBCHAPTER F. ILLEGAL LOANS

Sec. 124.251. ILLEGALITY OF LOAN NOT A DEFENSE. The illegality of a loan is not a defense in a credit union's action to recover on the loan.

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

Sec. 124.252. ILLEGALITY OF LOAN NOT A BAR TO ENFORCEMENT OR COLLECTION. The illegality of a loan does not prevent enforcement of the loan agreement against or collection of the loan from a person who is otherwise liable on the loan, including:

(1) the borrower; or

(2) a guarantor or surety.

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

SUBCHAPTER G. LOAN PROGRAMS

Sec. 124.301. PARTICIPATION LOANS. A credit union may market and sell participations in loans to members originated by the credit union to another credit union, corporation, or financial organization.

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

Sec. 124.302. GOVERNMENT LOAN PROGRAMS. A credit union may participate in:

(1) a guaranteed loan program of the United States government or a state government; and

(2) another government loan program approved by the commission.

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

SUBCHAPTER H. INVESTMENT OF MONEY

Sec. 124.351. PERMITTED INVESTMENTS. (a) A credit union may invest money not used in loans to members in:

(1) capital shares, obligations, participation certificates, or common or preferred stock of an agency, association, or company, subject to Section 124.352(a);

(2) loans to a national or state credit union association or corporation of which the credit union is a member;

(3) obligations, bonds, notes, or other evidences of indebtedness of a state or political subdivision of a state;

(4) certificates of deposit or other accounts issued by a state or national bank, savings and loan association, savings

association, or mutual savings bank;

(5) securities, obligations, participations, or other instruments of or issued by the United States, or in a trust established for investing directly or collectively in those investments;

(6) loans to, shares of, or deposits in another credit union, a central credit union, a corporate credit union, a central liquidity facility established under state or federal law, a trust, or an organization established for lending directly or collectively to credit unions;

(7) securities, obligations, participations, or other instruments fully or partially guaranteed as to principal, interest, or both by the United States, or in a trust established for investing directly or collectively in those investments;

(8) participation loans with another credit union, corporation, credit organization, or financial organization;

(9) notes receivable, loans to members, or other assets of a credit union operating under this subtitle or the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.); and

(10) other investments authorized by rules adopted by the commission that satisfy Subsection (b).

(b) A rule adopted under Subsection (a)(10) must be responsive to:

(1) changes in economic conditions or competitive practices; and

(2) the need for safety and soundness of credit union investments.

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

Sec. 124.352. LIMITATIONS ON INVESTMENTS. (a) An investment under Section 124.351(a)(1) may be made only if:

(1) the membership or ownership of the agency, association, or company is restricted to credit unions and their members or organizations of credit unions; and

(2) the agency, association, or company is designed primarily to serve or otherwise assist credit union operations.

(b) An investment under Section 124.351(a)(1) or (2) in any one agency, association, or company may not exceed the lesser of the

amount equal to:

(1) five percent of the credit union's total assets; or

(2) its reserves and undivided earnings.

(c) Notwithstanding Subsection (a), the commission by rule may authorize an investment under Section 124.351(a)(1) in an agency, association, or company:

(1) whose membership or ownership is not restricted to credit unions and their members or organizations of credit unions; or

(2) that is not designed primarily to serve or otherwise assist credit union operations.

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

CHAPTER 125. CREDIT UNION ACCOUNTS AND SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 125.001. DEFINITION. In this chapter, "multiple-party account" has the meaning assigned by Section 113.004, Estates Code, except that the term includes an account in which one or more of the parties is an organization, association, corporation, or partnership.

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. 20.013, eff. September 1, 2015.

Sec. 125.002. SHARE ACCOUNT. (a) Shares and membership shares shall be subscribed to and paid for in the manner prescribed by the bylaws. A credit union may limit the number of shares that may be owned by a member, but any such limitation must be applied equally to all members.

(b) A credit union may require credit union members to subscribe to and make payments on membership shares. Membership shares may not be pledged as security on any loan.

(c) The board of directors may establish different classes of share accounts classified in relation to different rights, restrictions, par value, and dividend rates.

(d) A joint account may hold more than one membership share, supporting membership for more than one member of the credit union.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 41, eff. Sept. 1, 2003.

Sec. 125.003. DEPOSIT ACCOUNTS. A deposit account consists of payments made under an agreement between the credit union and a depositor, including a draft account, checking account, savings account, certificate of deposit, individual development account, or other similar account or arrangement.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 42, eff. Sept. 1, 2003.

Sec. 125.004. CONSTRUCTION WITH OTHER LAWS. This chapter may not be construed to conflict with the laws of the United States or the laws of this state governing the taxation of multiple-party accounts.

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

SUBCHAPTER B. MULTIPLE-PARTY ACCOUNTS

Sec. 125.101. FORM OF ACCOUNT. (a) A member of a credit union or of a federal credit union doing business in this state may designate one or more persons to own a share or deposit account with the member in a multiple-party account.

(b) The account may provide for a right of survivorship.

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

Sec. 125.102. POWERS OF ACCOUNT HOLDERS. (a) A party to a multiple-party account may make a payment on a share or deposit account and a withdrawal subject to the account agreement.

(b) A party to the account may not vote in matters pertaining to, obtain a loan through, or hold office in the credit union unless the party is a member of the credit union.

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

Sec. 125.103. POWERS OF MEMBERS RELATING TO ACCOUNT. Subject to a policy adopted by the board, a member of a credit union by written notice to the credit union may:

(1) change or cancel a multiple-party account designation;

(2) change the form of the account; or

(3) stop or vary payment under the terms of the account.

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

Sec. 125.104. OWNERSHIP INTEREST. (a) The parties to a multiple-party account are presumed to own the account in equal undivided interests unless:

(1) the account agreement provides otherwise; or

(2) satisfactory proof of the net contributions to the account exists.

(b) The net contribution of a party to a multiple-party account is computed by adding:

(1) the total amount of all of the payments on a share or deposit made by or for the party, less the amount of all of the withdrawals made by or for the party that have not been paid to or applied for the use of another party;

(2) the pro rata share of interest or dividends included in the current balance of the account; and

(3) any life insurance proceeds added to the account because of the death of the party.

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

Sec. 125.105. DISCHARGE OF LIABILITY ON PAYMENT. Payment of all or part of a multiple-party account to a party to the account discharges the credit union's liability to each party to the extent of the payment.

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

Sec. 125.106. DIVISION OF ACCOUNT ON DEATH. (a) Unless otherwise provided by the account agreement or a trust agreement, the only effect the death of a party to a multiple-party account has on

the beneficial ownership of the account is to transfer the decedent's right in the account to the decedent's estate.

(b) An account that does not expressly provide for right of survivorship is presumed to be a nonsurvivorship account.

(c) If the credit union complies with an account agreement, the credit union may pay money representing shares or deposits on the order of a party either before or after the death of another party.

(d) A credit union acting under Subsection (c) does not have further liability for the amount paid.

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

Sec. 125.107. SETOFF OF ACCOUNT. Without qualifying another statutory right to a setoff or lien and subject to a contractual provision accepted by the credit union, a credit union has the right of setoff against the entire amount of a multiple-party account in which a party to the account is indebted to the credit union.

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

SUBCHAPTER C. MINOR ACCOUNTS

Sec. 125.201. POWERS OF CREDIT UNION RELATING TO ACCOUNT. A credit union may:

(1) open a share or deposit account in the name of a minor;

(2) receive a payment on the account by or for the minor;

(3) pay withdrawals;

(4) accept pledges to the credit union by or for the minor; and

(5) act in any other matter with respect to an account on the order of a minor.

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

Sec. 125.202. VOTING; OFFICE-HOLDING. (a) If permitted by the credit union's bylaws, a minor:

(1) may vote in a meeting of the credit union's members; and

(2) is eligible to hold an office or committee membership

in the credit union.

(b) A minor may not vote through a parent or guardian at a meeting of the credit union's members.

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

Sec. 125.203. DISCHARGE OF LIABILITY ON PAYMENT; EFFECT ON MINOR OF REQUIRED ACTION. (a) A payment or delivery of rights made by a credit union or a federal credit union to any of the following persons in connection with an account in the name of a minor discharges the credit union or federal credit union to the extent of the payment or delivery:

(1) the minor;

(2) a party to the account; or

(3) the parent or guardian of a deceased minor.

(b) The payment and a receipt, pledge, or other action required by the credit union is binding on the minor as if the minor had the capacity of an adult.

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

SUBCHAPTER D. TRUST ACCOUNT

Sec. 125.301. FORM OF ACCOUNT. (a) A credit union may issue shares or receive a deposit:

(1) in a revocable trust, if:

(A) a settlor is a member of the credit union; or

(B) a trustee or a beneficiary is a member of the credit union and the settlor is a member of the trustee's or beneficiary's family as that term is defined by the board in a written policy; or

(2) in an irrevocable trust, if a settlor, trustee, or beneficiary is a member of the credit union.

(b) A credit union may rely on any information provided by the trustee to determine whether a trust is revocable or irrevocable.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 87, Sec. 4, eff. Sept. 1, 1999.

Sec. 125.302. LOANS TO NONMEMBER TRUSTEE. Subject to limitations imposed by this subtitle or a rule adopted under this subtitle, a credit union may make a fully secured loan to a nonmember trustee to enable the trustee to perform or assist the trustee in performing the trustee's fiduciary responsibilities.

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

Sec. 125.303. BENEFICIARY FEES. A beneficiary who is not a member of a credit union is not required to pay a membership entrance fee.

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

Sec. 125.304. LIMITATIONS PLACED ON BENEFICIARY. A beneficiary who is not a member of a credit union may not vote in matters pertaining to, obtain a loan through, or hold office in the credit union.

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

Sec. 125.305. ACCOUNT TRANSACTION INQUIRIES. The credit union is not required to inquire of a trustee the reason for a transaction or the intended use for money withdrawn or borrowed.

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

Sec. 125.306. DISCHARGE OF LIABILITY ON PAYMENT. Payment of all or part of the shares and deposits to a trustee or other person authorized to request present payment on a trust account discharges the liability of the credit union to each settlor, trustee, and beneficiary to the extent of the payment.

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

Sec. 125.307. TERMINATION OF ACCOUNT. When a trust is

terminated, the credit union shall pay money remaining in a trust account as:

(1) directed by the trustee;

(2) prescribed by the trust agreement; or

(3) provided by applicable law, in the absence of direction from the trustee or by the trust agreement.

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

Sec. 125.308. EFFECT OF DEATH OF TRUSTEE ON ACCOUNT. (a) The death of a trustee does not affect the ownership or disposition of a trust account unless:

(1) the trust agreement provides otherwise; or

(2) there is not a surviving trustee, and:

(A) the account is a trust account subject to Subchapter B, Chapter 111, and Chapters 112 and 113, Estates Code; or

(B) written evidence of the terms of the trust does not exist.

(b) On the death of a trustee for a trust account for which the death of a trustee affects the ownership disposition of the account, the credit union shall pay out money in the trust account:

(1) in accordance with the trust agreement; or

(2) in the absence of written evidence of the terms of the trust, to a beneficiary or any other person authorized by law to request or receive payment.

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. 20.014, eff. September 1, 2015.

Sec. 125.309. TRUST ACCOUNT WITH LIMITED DOCUMENTATION. (a) For a trust account that is purported to be opened under a written trust agreement, the trustee may provide the credit union with a certificate of trust to evidence the trust relationship. The certificate must be an affidavit of the trustee and must include:

(1) the effective date of the trust;

(2) the name of the trustee;

(3) the name of or method for choosing a successor trustee;

(4) the name and address of each beneficiary;

(5) the authority granted to the trustee;

(6) the information needed for disposition of the trust account on the death of the trustee or the last survivor of two or more trustees;

(7) an indemnification of the credit union; and

(8) any other information required by the credit union.

(b) The credit union may accept and administer the trust account, in accordance with the certificate of trust, without requiring a copy of the trust agreement. The credit union is not liable for administering the account as provided by the certificate of trust, unless the credit union has actual knowledge that the certificate of trust is contrary to the terms of the trust agreement.

(c) On the death of the trustee or the last survivor of two or more trustees and notwithstanding Section 125.308, the credit union may pay all or part of the proceeds of the trust account as provided by the certificate of trust. If the trustee did not provide a certificate of trust, the credit union's right to treat the account as owned by a trustee ceases on the death of the trustee. On the death of the trustee or the last survivor of two or more trustees, the credit union, unless the certificate of trust provides otherwise, shall pay the proceeds of the account in equal shares to each person who survives the trustee, is named as a beneficiary in the certificate of trust, and can be located by the credit union from the credit union's records. If there is no certificate of trust, payment of the proceeds of an account shall be made as provided by Section 125.308. Payment made under this section for all or part of the proceeds of an account discharges any liability of the credit union to the extent of the payment. The credit union may pay all or part of the proceeds of an account in the manner provided by this section, regardless of whether it has knowledge of a competing claim, unless the credit union receives actual knowledge that payment has been restrained by court order.

(d) This section does not require a credit union to accept an account from a trustee or to search for the location of a named beneficiary that is not named in its records.

(e) This section does not affect a contractual provision to the contrary that otherwise complies with the laws of this state.

(f) For purposes of this section, "actual knowledge" is presumed if a credit union possesses a copy of a trust agreement that

is certified as to authenticity by a settlor, trustee, beneficiary, or an attorney for the settlor, trustee, or beneficiary.

Added by Acts 2003, 78th Leg., ch. 533, Sec. 43, eff. Sept. 1, 2003.

SUBCHAPTER E. THIRD-PARTY CLAIMS AND OTHER RIGHTS RELATING TO ACCOUNTS

Sec. 125.401. THIRD-PARTY CLAIM. (a) In this section:

(1) "Credit union" includes:

(A) a credit union organized under the laws of this state;

(B) a foreign credit union; and

(C) a federal credit union.

(2) "Out-of-state credit union" means a credit union that:

(A) is not organized under the laws of this state; and

(B) has its main or principal office in another state or country.

(3) "Texas credit union" means a credit union that:

(A) is organized under the laws of this state or federal law; and

(B) has its main or principal office in this state.

(b) A credit union doing business in this state must be served with citation or other appropriate process issued from a court in connection with a suit instituted by a third party to recover or establish an interest in a deposit or share account before the credit union is required to:

(1) recognize the third party's claim;

(2) withhold payment of the account to any party to the account; or

(3) withhold payment to the order of any party to the account.

(c) A claim against a depositor, joint account owner, or member of a credit union shall be delivered or otherwise served as required or permitted by law at the address of the registered agent of the credit union as designated in a registration filed under Section 201.102 or 201.103, as applicable.

(d) A claim against a depositor, joint account owner, or member of an out-of-state credit union that files a registration statement under Section 201.102 or a Texas credit union that files a

registration statement under Section 201.103 is not effective with respect to the credit union if the claim is served or delivered to an address other than the address of the credit union's registered agent as provided in the registration.

(e) To prevent or limit a credit union's compliance with or response to a claim subject to this section, the depositor, joint account owner, or member must seek an appropriate remedy, including a restraining order, injunction, or protective order, to prevent or suspend the credit union's response to a claim against the depositor, joint account owner, or member.

(f) A credit union that does not register with the secretary of state under Section 201.102 or 201.103 is subject to service or delivery of all claims against depositors, joint account owners, or members of the credit union or against the credit union itself by serving the president or vice president of the credit union or as otherwise provided by law.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 44, eff. Sept. 1, 2003.

Sec. 125.402. DISCLOSURE OF RECORDS OF MEMBER; CONFIDENTIALITY. (a) A credit union is not required to disclose or produce to a third party or permit a third party to examine a record pertaining to the affairs of a credit union member unless:

(1) the request is made in connection with an examination or audit by a government agency authorized by law to examine credit unions;

(2) the member consents to the disclosure or production of the record; or

(3) the request is made by the department or is made in response to:

(A) a subpoena or other court order; or

(B) an administrative subpoena or summons issued by a state or federal agency as authorized by law.

(b) The commission may authorize the disclosure of information relating to a credit union member under circumstances and conditions that the commission determines are appropriate or required in the daily operation of the credit union's business.

(c) The commission may adopt reasonable rules relating to the:

(1) permissible disclosure of nonpublic personal information about the accounts of credit union members; and

(2) duties of the credit union to maintain confidentiality of member accounts.

(d) The directors, officers, committee members, and employees and any honorary or advisory directors of a credit union shall hold in confidence all information regarding transactions of the credit union, including information concerning transactions with the credit union's members and the members' personal affairs, except to the extent necessary in connection with making, extending, or collecting a loan or extension of credit, or as otherwise authorized by this section, commission rules adopted under Subsection (c), or other applicable law.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 17, eff. September 1, 2013.

Sec. 125.403. RECOVERY OF DOCUMENT PRODUCTION EXPENSES FROM THIRD PARTY. (a) A credit union or federal credit union doing business in this state is entitled to recover from a third party the reasonable cost actually incurred in disclosing or producing a record under this subtitle or other applicable law unless the cost was incurred in connection with an examination or audit by a government agency authorized by law to examine credit unions.

(b) The cost incurred in disclosing or producing a record includes the cost of reproduction, postage, or delivery.

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

Sec. 125.404. LIENS AND SETOFFS. (a) To the extent of a member's direct or indirect indebtedness to a credit union, the credit union has:

(1) a lien, enforceable with or without judicial process, on the member's shares and deposits, accumulated dividends, and interest; and

(2) a right to set off against the member's shares, deposits, accumulated dividends, and interest.

(b) A credit union may allow a withdrawal to be made without affecting the credit union's right to a setoff or lien.

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

Sec. 125.405. ACCOUNT WITHDRAWALS. (a) A credit union may require not longer than 60 days' notice for a withdrawal from a share or deposit account.

(b) The commissioner may impose an advance withdrawal notice requirement following issuance of a cease and desist order under Chapter 122. The commissioner by rule may require that a requirement imposed under this subsection apply to all members of the credit union.

(c) A membership share may not be withdrawn unless membership in the credit union is terminated.

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

SUBCHAPTER F. SAFE DEPOSIT BOXES

Sec. 125.501. RENTAL OF SAFE DEPOSIT BOX. A credit union or federal credit union may maintain and rent safe deposit boxes.

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

Sec. 125.502. RELATIONSHIP BETWEEN CREDIT UNION AND BOX HOLDER. (a) In the absence of a contract to the contrary, the relationship between a credit union and the renter of a safe deposit box maintained at the credit union is that of lessor and lessee and landlord and tenant. The rights and liabilities of the credit union are governed by the law governing those relationships.

(b) The lessee is for all purposes in possession of the box and its contents.

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

Sec. 125.503. ACCESS BY MORE THAN ONE PERSON. (a) In the absence of a contract to the contrary, a credit union shall allow

each holder of a safe deposit box jointly held in the name of two or more persons or a person other than the lessee designated in the lease agreement:

(1) access to the box; and

(2) removal of its contents.

(b) A credit union is not responsible for damage arising because a holder or other designated person had access to the box or removed its contents.

(c) The death of a holder of a jointly held safe deposit box does not affect the right of another holder or other designated person to have access to and remove contents from the box.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 87, Sec. 5, eff. Sept. 1, 1999.

Sec. 125.504. RELOCATION OF SAFE DEPOSIT BOX; INVENTORY OF CONTENTS. (a) Except as otherwise provided by this section, Sections 125.505 through 125.507, Chapter 151, Estates Code, or other law, a credit union may not relocate a safe deposit box rented for a term of six months or longer if the box rental is not delinquent or may not open the box to relocate its contents to another location, unless:

(1) the lessee is present when the box is opened or relocated; or

(2) the lessee has given the credit union written authorization to relocate the box or to open the box for purposes of relocation.

(b) Storage conditions at the new box location must be at least as secure as the conditions at the original location.

(c) If the box is opened during relocation, two employees shall prepare a detailed inventory of the contents of the box. At least one of the employees must be an officer or manager of the credit union and a notary public.

(d) One lessee of a jointly held safe deposit box is sufficient to personally supervise or give written authorization for the box's relocation.

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. 20.015,

eff. September 1, 2015.

Sec. 125.505. NOTICE OF BOX RELOCATION. (a) A credit union shall give a lessee of a safe deposit box at least 30 days' notice of the box's relocation. The notice must state:

(1) the scheduled date and time of the relocation; and

(2) whether the box will be opened during the relocation.

(b) If the lessee does not personally supervise the relocation or give written authorization for the relocation, the credit union shall notify the lessee of the new box number or location not later than the 30th day after the date of the relocation. The credit union must include a copy of the signed and notarized inventory report required by Section 125.504(c) with the notice.

(c) A notice required by this section must be sent by certified mail, return receipt requested, to each lessee named in the records of the credit union at the address shown in those records.

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

Sec. 125.506. COST OF NOTICE AS BOX RENTAL. The credit union may treat the cost of certified mailings incurred in connection with each safe deposit box relocation other than the cost of the first notice as box rental due and payable at the expiration of the rental term.

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

Sec. 125.507. EMERGENCY RELOCATION OF SAFE DEPOSIT BOX. (a) A credit union may relocate a safe deposit box or open the box to relocate its contents to another location if the security of the box is threatened or destroyed by an unforeseeable circumstance beyond the credit union's control, including a natural disaster such as a tornado, flood, or fire.

(b) Not later than the 90th day after the date on which the box is relocated, the credit union shall notify each lessee in whose name the box is held of the new box number or location. The notice must be sent by certified mail, return receipt requested, to each lessee named in the records of the credit union at the address shown in

those records.

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

Sec. 125.508. KEY IMPRINTING. (a) A credit union that rents or permits access to a safe deposit box shall:

(1) imprint all keys issued to the box after September 1, 1992, with its routing number; or

(2) issue keys imprinted with the routing number.

(b) If available space on a key is insufficient for imprinting the routing number, the credit union shall attach to the key a tag imprinted with the routing number.

(c) If a credit union believes that the routing number imprinted on a key, or a tag attached to a key, used to access a safe deposit box has been altered or defaced in a manner that the correct routing number is illegible, the credit union shall notify the Department of Public Safety, on a form designated by the commissioner, not later than the 10th day after the date the key is used to access the box.

(d) This section does not require a credit union to inspect the routing number imprinted on a key or an attached tag to determine whether the number has been altered or defaced.

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

Sec. 125.509. LIABILITY FOR ACCESS TO OR REMOVAL OF CONTENTS. A credit union that has identified the keys to a safe deposit box in accordance with Section 125.508 and that follows applicable law and the credit union's established security procedures in permitting access to the box is not liable for damages arising because of access to or removal of the box's contents.

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

Sec. 125.510. DELINQUENT RENTS. (a) If the rental of a safe deposit box is delinquent for six months or longer, the credit union may open the box only if:

(1) the credit union sends notice of the delinquency to the

lessee; and

(2) the rent is not paid before the date specified in the notice.

(b) The notice must:

(1) be sent by certified mail, return receipt requested, to the lessee named in the books of the credit union at the address shown in those books; and

(2) specify a date by which payment must be made that may not be before the 61st day after the date on which the notice is mailed.

(c) The box must be opened in the presence of two employees, and the credit union shall prepare a detailed inventory of the contents of the box as provided by reporting instructions of the comptroller. At least one of the employees must be an officer or manager of the credit union and a notary public.

(d) The credit union shall place the contents of the box in a sealed envelope or container that states the lessee's name. The credit union shall hold the contents of the box subject to a lien for:

(1) the box's rental;

(2) the cost of opening the box; and

(3) any damage in connection with the box.

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

Sec. 125.511. AUCTION OF CONTENTS. (a) If the rental, cost, and damages determined under Section 125.510(d) are not paid before the second anniversary of the date on which the box is opened, the credit union may:

(1) sell all or part of the contents at a public auction in the manner and on the notice prescribed for the sale of real property under deed of trust under Section 51.002, Property Code; and

(2) apply the sale proceeds to the rental, cost, and damages.

(b) The credit union shall send to the comptroller as provided by Chapter 74, Property Code:

(1) the unauctioned contents of a box; and

(2) any excess proceeds from the auction.

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

CHAPTER 126. CREDIT UNION SUPERVISION AND REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 126.001. APPOINTMENT OF CONSERVATOR OR LIQUIDATING AGENT. The commissioner may appoint any person, including the share and deposit guaranty corporation or credit union provided for by Section 15.410, as a conservator or a liquidating agent under this chapter.

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

Sec. 126.002. CONFIDENTIALITY OF INFORMATION. (a) Except as provided by Subsections (b) and (c), information obtained directly or indirectly by the department in any manner, including by application or examination, concerning the financial condition or business affairs of a credit union and the files and records of the department relating to that information, except a statement intended for publication, are confidential.

(b) Confidential information may not be disclosed to a member of the commission, and a member of the commission may not be given access to the files or records of the department, except that the commissioner may disclose to the commission information, files, and records pertinent to a hearing or matter pending before the commission or the commissioner.

(c) The commissioner may disclose the information described by Subsection (a) to a law enforcement agency, a share insuring organization, or another department, agency, or instrumentality of this state, another state, or the United States if the commissioner determines that disclosure is necessary or proper to enforce the laws of this state applicable to credit unions.

(d) Information obtained by the department from a federal or state supervisory agency that is confidential under federal law or the laws of that state may not be disclosed except as provided by the applicable federal or state law.

(e) Confidential information that is provided by the department to a credit union, organization, or service provider of a credit union, whether in the form of a report of examination or otherwise, is the confidential property of the department. The recipient or an officer, director, employee, or agent of the recipient may not make

the information public and may not disclose the information to a person not officially connected to the recipient as an officer, director, employee, attorney, auditor, or independent auditor, except as authorized by rules adopted under this subtitle. A credit union may disclose a report of examination or relevant portions of the report to another credit union proposing to merge or consolidate with the credit union or to a fidelity bond carrier if the recipient executes a written agreement not to disclose information in the report.

(f) Discovery of confidential information from a person subject to this subtitle or Chapter 15 under subpoena or other legal process must comply with rules adopted under this subtitle, Chapter 15, and any other applicable law. The rules may:

(1) restrict release of confidential information to the portion directly relevant to the legal dispute at issue; and

(2) require that a protective order, in a form and under circumstances specified by the rules, be issued by a court before release of the confidential information.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 157, Sec. 13, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 533, Sec. 45, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 18, eff. September 1, 2013.

Sec. 126.003. ENFORCEABILITY OF AGREEMENT MADE BY CREDIT UNION BEFORE CONSERVATORSHIP OR LIQUIDATION. An agreement that tends to diminish or defeat the interest of the conservator or liquidating agent in an asset acquired under this chapter, either as security for a loan or by purchase, is not valid against the conservator or liquidating agent unless the agreement is:

(1) in writing;

(2) executed by the credit union and each person claiming an adverse interest under the agreement, including the obligor, contemporaneously with the acquisition of the asset by the credit union;

(3) approved by the board with the approval recorded in the minutes of the board; and

(4) an official record of the credit union continuously from the time of its execution.

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

SUBCHAPTER B. EXAMINATIONS

Sec. 126.051. EXAMINATIONS. (a) The department, through examiners it appoints and in accordance with commission rules, shall periodically examine the books and records of each credit union.

(b) In lieu of an examination under this section, the commissioner may accept:

(1) the examination report of a regulator authorized to examine a credit union, foreign credit union, federal credit union, or other financial institution; or

(2) the audit report of an accountant, satisfactory to the commissioner, who has made and submitted a report of the condition of the affairs of a credit union, foreign credit union, federal credit union, or other financial institution.

(c) The commissioner may accept all or part of a report in lieu of all or part of an examination. An accepted part of the report has the same validity as an examination under this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 46, eff. Sept. 1, 2003.

Sec. 126.052. ACCESS TO INFORMATION. An officer, director, agent, or employee of a credit union shall give an examiner free access to any information relating to the credit union's business, including access to books, papers, securities, and other records.

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

Sec. 126.053. WITNESSES; PRODUCTION OF DOCUMENTS. (a) In an examination conducted under this subchapter, the commissioner or the commissioner's designee may:

(1) subpoena witnesses;

(2) administer an oath or affirmation to a person, including any officer, director, agent, or employee of a credit

union, and examine the person under oath or affirmation on any subject the commissioner considers pertinent to the financial condition or the safety and soundness of the activities of a credit union; or

(3) require and compel by subpoena the production of documents that are not voluntarily produced, including books, papers, securities, and records.

(b) The commissioner may apply to a district court in Travis County for an order requiring a person to obey a subpoena, to appear, or to answer questions in connection with the examination or investigation.

(c) The court shall issue an order under Subsection (b) if the court finds good cause to issue the subpoena or to take testimony.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 47, eff. Sept. 1, 2003.

Sec. 126.054. REPORT OF EXAMINATION. (a) An examiner shall report the results of an examination, including a general statement of the credit union's affairs, on a form prescribed by the commissioner and approved by the commission.

(b) The department shall send a copy of the report to the board not later than the 30th day after the examination date.

(c) The report of examination is confidential. The commissioner may provide a copy of the report to other parties as described in Section 126.002(c).

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 157, Sec. 14, eff. Sept. 1, 1999.

Sec. 126.055. FEE. The commission may establish and a credit union shall pay a fee based on the cost of performing an examination of the credit union.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 157, Sec. 15, eff. Sept. 1, 1999.

SUBCHAPTER C. CONSERVATORSHIP ORDER

Sec. 126.101. CONSERVATORSHIP ORDER; APPOINTMENT OF CONSERVATOR. (a) The commissioner may immediately issue a conservatorship order and appoint a conservator to manage a credit union's affairs if:

(1) the commissioner, in performing the duties under this subtitle, finds that:

(A) the credit union is insolvent or in imminent danger of insolvency; or

(B) the credit union or an employee, officer, or director of a credit union, including an honorary or advisory director has:

(i) violated this subtitle, a rule adopted under this subtitle, or another law that applies to credit unions;

(ii) violated or neglected a final order of the commissioner or commission;

(iii) refused to submit to examination under oath;

(iv) refused to permit the commissioner or the commissioner's representative to examine the credit union's records and affairs, including books, papers, and accounts;

(v) conducted the credit union's business in an unsafe, unauthorized, or unlawful manner; or

(vi) failed or refused to authorize and direct another person to permit the commissioner or the commissioner's representative to examine the credit union's records in the other person's custody or control, including books, papers, and accounts, following the commissioner's request for the granting of that authority and direction; and

(2) the commissioner determines that the finding under Subdivision (1) is sufficiently severe to require immediate affirmative action to prevent further dissipation of the credit union's assets.

(b) The order must clearly state the grounds for conservatorship.

(c) The board may:

(1) agree in writing to a conservatorship order; and

(2) waive its right to appeal the order under Section 126.105.

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

Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 19, eff. September 1, 2013.

Sec. 126.102. SERVICE OF ORDER. (a) A conservatorship order must be served personally to an officer or director of the credit union by the commissioner, the deputy commissioner, or another person authorized by the commissioner.

(b) Service may be by mail if an officer or director is not available for service on the date personal service of the order is attempted.

(c) Service by mail must be by certified or registered mail, must be addressed to the credit union at the address shown for its principal office by department records and to the home address of the chairman of the board, and is complete on deposit of the order in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 20, eff. September 1, 2013.

Sec. 126.103. EFFECT OF ORDER. Following service of a conservatorship order:

(1) the commissioner shall take possession and control of the credit union's books, records, property, assets, and business; and

(2) the credit union shall cease all operations except those authorized by the commissioner and conducted under the commissioner's supervision.

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

Sec. 126.105. APPEAL OF ORDER; HEARING. (a) Unless the board waives its right to appeal under Section 126.101(c), the board may file a written appeal of the conservatorship order with the commissioner not later than the 10th business day after the date the

order is served as provided by Section 126.102. The appeal must include a certified copy of the board resolution and must state whether the board requests a hearing.

(b) If the board requests a hearing, the commissioner shall promptly request from the State Office of Administrative Hearings a hearing date that is not earlier than the 11th day nor later than the 30th day after the date on which the commissioner receives the appeal.

(c) The commissioner shall give the credit union notice of the date, time, and place of the hearing.

(d) The filing of an appeal does not suspend the order, and the order remains in effect until the commission's final disposition of the appeal.

(e) Not later than the 45th day after a proposal for decision is received from the State Office of Administrative Hearings, the commission shall meet to consider the proposal.

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

Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 21, eff. September 1, 2013.

Sec. 126.106. FAILURE TO APPEAL OR APPEAR. If the board does not appeal the conservatorship order or fails to appear at the hearing provided for by Section 126.105, the credit union is presumed to have consented to the commissioner's disposition action, and the commissioner may dispose of the conservatorship matter as the commissioner considers appropriate.

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

Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 22, eff. September 1, 2013.

Sec. 126.107. EXTENSION OF DATE AND TIME FOR HEARING. The parties may agree to extend the date and time of the hearing.

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

Sec. 126.108. CONFIDENTIALITY; DISCLOSURE. A conservatorship order and a copy of a notice, correspondence, transcript, pleading, or other document relating to the order are confidential and may be disclosed only in a related legal proceeding or as otherwise authorized by law. The commissioner may release to the public information regarding the existence of an order if the commissioner concludes that release of the information would enhance effective enforcement of the order.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 48, eff. Sept. 1, 2003.

SUBCHAPTER D. ADMINISTRATION OF CONSERVATORSHIP

Sec. 126.151. CONSERVATOR SUBJECT TO COMMISSION CONTROL. A conservator shall exercise the powers authorized under Sections 126.152-126.154 subject to commission rules and under the commissioner's supervision.

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

Sec. 126.152. GENERAL POWERS OF CONSERVATOR. The conservator may:

(1) take possession and control of the books, records, property, assets, and business of the credit union;

(2) conduct the business and affairs of the credit union;

(3) sell or assign assets to the conservator; and

(4) perform any other action as necessary in connection with the conservatorship.

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

Sec. 126.153. POWERS RELATING TO CLAIMS. The conservator may:

(1) determine the existence and amount of claims;

(2) allow proved claims of security, preference, or priority;

(3) disallow unproved claims of security, preference, or priority; and

(4) settle or release a claim in favor of or against the

credit union.

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

Sec. 126.154. POWER TO REPUDIATE BURDENSOME TRANSACTION. The conservator may repudiate a contract or unexpired lease the conservator considers burdensome to the credit union.

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

Sec. 126.155. POWER TO PROTECT, PRESERVE, AND RECOVER PROPERTY. (a) The conservator may take measures necessary to preserve, protect, and recover the assets or property of the credit union, including filing a lawsuit against any person.

(b) An asset or property of the credit union includes a claim or cause of action that belongs to or that may be asserted by the credit union.

(c) The conservator may deal with that property in the capacity of conservator.

(d) The conservator may file, prosecute, or defend a suit brought by or against the credit union if the conservator considers it necessary to protect the interested party or property affected by the suit.

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

Sec. 126.156. DUTIES OF CONSERVATOR. The conservator shall:

(1) take actions as directed by the commissioner to remove the causes and conditions that made the conservatorship necessary; and

(2) report to the commissioner from time to time during the conservatorship as required by the commissioner.

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

Sec. 126.157. TERM OF CONSERVATOR. The conservator shall serve until the purposes of the conservatorship are accomplished.

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

Sec. 126.158. TRANSFER OF MANAGEMENT OF REHABILITATED CREDIT UNION. If the credit union is rehabilitated, the conservator shall return the management of the credit union to the board under terms that are reasonable and necessary to prevent a recurrence of the conditions that created the need for conservatorship.

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

Sec. 126.159. COST OF CONSERVATORSHIP. (a) The commissioner shall determine and approve any reasonable expenses attributable to the service of a conservator, including costs incurred by the department and the compensation and expenses of the conservator and any professional employees appointed to represent or assist the conservator. The commissioner or an employee of the department may not receive compensation in addition to salary for serving as conservator, but the department may receive reimbursement for the fully allocated personnel cost associated with the service of the commissioner or the employee as conservator.

(b) All approved expenses shall be paid by the credit union. The department has a lien against the assets and money of the credit union to secure payment of approved expenses. The lien has a higher priority than any other lien against the credit union.

(c) Notwithstanding this subchapter, the credit union may retain attorneys and hire other persons to assist the credit union in contesting or satisfying the requirements of an order of conservatorship. The commissioner shall authorize the payment of reasonable fees and expenses for the attorneys and other persons as expenses of the conservatorship.

(d) The commissioner may waive or defer collection of assessment or examination fees by the department from the credit union during a period of conservatorship if the waiver or deferral would appear to benefit the prospects for rehabilitation. As a condition of release from conservatorship, the commissioner may require the rehabilitated credit union to pay or develop a reasonable plan for payment of any deferred fees.

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

by Acts 2003, 78th Leg., ch. 533, Sec. 49, eff. Sept. 1, 2003.

Sec. 126.160. JURISDICTION AND VENUE. (a) A suit filed against a credit union while the credit union is under conservatorship, or against a person in connection with an action taken or decision made by that person as a conservator of a credit union, must be brought in Travis County regardless of whether the credit union remains under conservatorship.

(b) A suit filed by the conservator under Section 126.155 may be brought in Travis County.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 50, eff. Sept. 1, 2003.

Sec. 126.161. EXHAUSTION OF ADMINISTRATIVE REMEDIES. Administrative remedies must be exhausted before a court may:

(1) assert jurisdiction over a claim against the conservator or the credit union; or

(2) restrain or otherwise affect the exercise of the powers or functions of the conservator.

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

SUBCHAPTER E. LIQUIDATION ORDER; INJUNCTION

Sec. 126.201. LIQUIDATION ORDER; APPOINTMENT OF LIQUIDATING AGENT. (a) After the commissioner has issued a conservatorship order and provided an opportunity for hearing, the commissioner by liquidation order may appoint a liquidating agent and direct that the credit union be liquidated if:

(1) the board requests issuance of a liquidation order and liquidation of the credit union;

(2) the credit union otherwise consents to the liquidation; or

(3) the commissioner:

(A) finds that the closing of the credit union and the liquidation of the credit union's assets are in the public interest and the best interest of the credit union's members, depositors, and creditors; and

(B) determines that the credit union is not in a condition to continue business and cannot be rehabilitated as provided by this chapter.

(b) If the board consents to the liquidation order and waives the necessity of a conservatorship order, the commissioner may issue a liquidation order without first issuing a conservatorship order.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 23, eff. September 1, 2013.

Sec. 126.202. SERVICE OF ORDER. The commissioner shall serve a liquidation order in the same manner provided for service of a conservatorship order.

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

Sec. 126.203. SUIT FOR INJUNCTION. (a) Not later than the fifth day after the date on which the liquidation order is served, a credit union that has not requested or consented to a liquidation order may, if authorized by certified board resolution, sue to enjoin the commissioner from liquidating the credit union.

(b) The suit must be brought in the district court of the county in which the credit union's principal office is located.

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

Sec. 126.204. ACTION PENDING INJUNCTION HEARING. (a) The court, without notice or hearing, may restrain the commissioner from liquidating the credit union's assets until after a hearing on the suit is held.

(b) If the court restrains the commissioner, the court shall instruct the commissioner to hold the credit union's assets in the commissioner's possession and control until disposition of the suit.

(c) With court approval, the commissioner may take any necessary or proper action to prevent loss or depreciation in the value of the assets.

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

Sec. 126.205. HEARING ON INJUNCTION; APPEAL. (a) The court, as soon as possible, shall hear the suit and shall enter a judgment enjoining or refusing to enjoin the commissioner from liquidating the credit union's assets.

(b) The commissioner, regardless of the judgment entered by the trial court or any supersedeas bond filed, shall retain possession and control of the credit union's assets until final disposition of any appeal of the judgment.

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

Sec. 126.206. NATIONAL CREDIT UNION ADMINISTRATION AS LIQUIDATING AGENT. (a) The commissioner may tender a credit union that has been closed for liquidation to the National Credit Union Administration or its successor as liquidating agent if the shares and deposits of the credit union were insured by the National Credit Union Share Insurance Fund or its successor on the date of closing.

(b) After acceptance of tender of the credit union, the National Credit Union Administration or its successor, as liquidating agent of the credit union, shall perform the acts and duties that it considers necessary or desirable and that are permitted or required by federal law or this chapter. The National Credit Union Administration, as liquidating agent, is not subject to commission control.

(c) If the National Credit Union Share Insurance Fund pays the insured share and deposit liabilities of a credit union that is being liquidated under this subchapter, the National Credit Union Administration is subrogated, to the extent of the payment, to all rights that the owners of the share or deposit accounts have against the credit union.

Added by Acts 2003, 78th Leg., ch. 533, Sec. 51, eff. Sept. 1, 2003.

SUBCHAPTER F. ADMINISTRATION OF LIQUIDATION

Sec. 126.251. PERMISSIBLE ACTIVITIES IN LIQUIDATION. (a) A credit union in liquidation continues in existence to discharge

debts, collect and distribute assets, and wind up the credit union's business.

(b) The credit union may sue and be sued to enforce debts and obligations until its affairs are fully adjusted.

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

Sec. 126.252. COMPENSATION OF CREDIT UNION EMPLOYEES AND OFFICERS. (a) This chapter does not prevent compensation of a salaried employee or officer of a credit union during the credit union's liquidation.

(b) The compensation is considered an incidental expense of the liquidation.

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

Sec. 126.253. LIQUIDATING AGENT SUBJECT TO COMMISSION CONTROL. The liquidating agent shall perform the duties required by the following sections subject to commission rules and under the commissioner's supervision:

(1) Sections 126.254-126.258; and

(2) Sections 126.301, 126.302, 126.304, 126.305, and 126.306.

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

Sec. 126.254. POSSESSION, CONSOLIDATION, AND DISPOSITION OF ASSETS. The liquidating agent shall:

(1) receive and take possession of the books, records, assets, and property of the credit union;

(2) sell, enforce collection of, and liquidate assets and property; and

(3) sell or assign assets to the liquidating agent subject to Section 126.353.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.36, eff. Sept. 1, 1999.

Sec. 126.255. COMPOUND DEBTS. The liquidating agent shall compound all bad or doubtful debts.

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

Sec. 126.256. COURT ACTION BY LIQUIDATING AGENT. The liquidating agent shall:

(1) sue in the name of the liquidating agent or may sue in the name of the credit union; and

(2) defend an action brought against the liquidating agent or the credit union.

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

Sec. 126.257. REPUDIATION OF BURDENSOME TRANSACTIONS. The liquidating agent shall repudiate a contract or unexpired lease the liquidating agent considers burdensome to the credit union.

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

Sec. 126.258. EXECUTION OF DOCUMENTS; OTHER NECESSARY ACTS. The liquidating agent may execute any document and perform any other action that:

(1) the liquidating agent considers necessary or desirable to discharge the liquidating agent's duties; and

(2) may be necessary under this subchapter and Subchapter G.

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

Sec. 126.259. JURISDICTION AND VENUE. (a) A suit against a credit union or its liquidating agent while a liquidation order is in effect must be brought in Travis County.

(b) The liquidating agent may file suit in Travis County to preserve, protect, or recover the credit union's assets or property.

(c) An asset or property of the credit union includes a claim or cause of action that belongs to or that may be asserted by the

credit union.

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

Sec. 126.260. EXHAUSTION OF ADMINISTRATIVE REMEDIES. Except as provided by Subchapter E, administrative remedies must be exhausted before a court may:

(1) assert jurisdiction over a claim against the liquidating agent or the credit union; or

(2) restrain or otherwise affect the exercise of the powers or functions of the liquidating agent.

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

SUBCHAPTER G. CLAIMS RELATING TO CREDIT UNION IN LIQUIDATION

Sec. 126.301. CLAIMS AGAINST CREDIT UNION. The liquidating agent shall:

(1) determine the existence and amount of claims;

(2) allow proved claims of security, preference, or priority;

(3) settle or release a claim in favor of or against the credit union;

(4) disallow unproved claims of security, preference, or priority; and

(5) make distributions to and pay creditors and members of the credit union as their interests appear.

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

Sec. 126.302. NOTICE TO CREDITORS AND MEMBERS. (a) The liquidating agent shall give notice to creditors and members to present and prove their claims.

(b) The notice must be published once a week for three successive weeks in a newspaper of general circulation in each county in which the credit union maintained an office or branch to transact business on the date the credit union ceased unrestricted operations.

(c) When the aggregate book value of the assets and property of the credit union being liquidated is less than $10,000, the

commissioner shall declare the credit union to be a "no publication" liquidation, and publication of notice to creditors and members under this section is not required.

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

Sec. 126.303. PRIORITY OF CLAIMS. The liquidating agent shall use the credit union's assets to pay, in the following order:

(1) secured creditors to the extent of the value of their collateral;

(2) liquidation expenses, including a surety bond if required;

(3) depositors;

(4) general creditors, including secured creditors to the extent that their claims exceed the value of their collateral; and

(5) distributions to members in proportion to the shares held by each member.

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

Sec. 126.304. LIQUIDATION DIVIDENDS. (a) The liquidating agent from time to time shall make a ratable liquidation dividend on claims that have been:

(1) proved to the satisfaction of the board or the liquidating agent; or

(2) adjusted by a court.

(b) After the credit union's assets have been liquidated, the liquidating agent shall make further liquidation dividends on claims previously proved or adjusted.

(c) For purposes of making a further liquidation dividend under Subsection (b), the liquidating agent may accept the statement of an amount due a claimant as shown on the credit union's books and records instead of a formal proof of claim filed on the claimant's behalf.

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

Sec. 126.305. PAYMENT OF CLAIMS IN "NO PUBLICATION"

LIQUIDATION. (a) In a "no publication" liquidation, the liquidating agent shall determine from all sources available, and within the limits of the credit union's available money, the amounts due to creditors and members.

(b) Not earlier than the 61st day after the date on which the liquidating agent is appointed, the liquidating agent shall distribute the credit union's money to creditors and members ratably and as their interests appear.

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

Sec. 126.306. BARRED CLAIMS. (a) A claim not filed before the liquidating agent pays the final liquidation dividend is barred.

(b) A claim rejected by the liquidating agent is barred unless suit to appeal the liquidating agent's rejection is filed within three months after the date of notice of rejection.

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

SUBCHAPTER H. LIQUIDATING AGENT

Sec. 126.351. REMOVAL OF LIQUIDATING AGENT. (a) On finding that the liquidating agent has failed to properly perform the liquidating agent's duties in a timely and efficient manner or has violated this subtitle or a rule adopted under this subtitle, the commissioner by removal order may take possession and control of the books, records, property, assets, and business of the credit union.

(b) The removal order must:

(1) remove the liquidating agent and appoint a successor liquidating agent to complete the liquidation and the winding up of the credit union's affairs subject to the commissioner's supervision and control; and

(2) be served on the liquidating agent being removed.

(c) The removal order takes effect immediately on service.

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

Sec. 126.352. REPLACEMENT OF LIQUIDATING AGENT. The commissioner shall appoint another liquidating agent on a liquidating

agent's resignation, death, illness, removal, desertion, or incapacity to function.

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

Sec. 126.353. CONFLICT OF INTEREST. (a) The liquidating agent may not acquire an asset of the credit union in liquidation or purchase a loan of the credit union without the commissioner's prior written approval.

(b) A liquidating agent may not obtain from the liquidation compensation or profit for:

(1) direct or indirect personal benefit;

(2) the benefit of a family member of or a person associated with the liquidating agent; or

(3) the benefit of a business enterprise with which the liquidating agent is associated, other than the credit union.

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

Sec. 126.354. COMPENSATION. (a) A liquidating agent is entitled to receive reasonable compensation during the liquidation.

(b) The compensation is considered an incidental expense of the liquidation.

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

SUBCHAPTER I. COMPLETION OF LIQUIDATION

Sec. 126.401. CERTIFICATE OF LIQUIDATION AND DISTRIBUTION. The commissioner shall prescribe the form of a certificate to be completed by the liquidating agent attesting that distribution has been made and liquidation is complete.

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

Sec. 126.402. CANCELLATION OF CERTIFICATE OF INCORPORATION. The commissioner, on receipt and approval of the certificate executed under Section 126.401, shall cancel the credit union's certificate of

incorporation.

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

Sec. 126.403. WINDING UP OF CREDIT UNION BUSINESS. During the three-year period following cancellation of the credit union's certificate of incorporation, the credit union continues to exist and the liquidating agent, or a successor or other person designated by the commissioner, may act on the credit union's behalf to:

(1) pay, satisfy, or discharge an existing liability or obligation;

(2) collect and distribute assets; and

(3) act as required to adjust and wind up the credit union's business and affairs, including suing or being sued in the credit union's corporate name.

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

SUBCHAPTER J. VOLUNTARY LIQUIDATION

Sec. 126.451. BOARD RESOLUTION. Unless the commissioner has issued a liquidation order, the board may adopt a resolution recommending voluntary dissolution of the credit union and directing submission of the question of liquidation to the members of the credit union.

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

Sec. 126.452. NOTIFICATION TO COMMISSIONER OF PROPOSED LIQUIDATION. Not later than the fifth day after the date on which the board's resolution recommending voluntary dissolution is adopted, the board's presiding officer shall notify the commissioner in writing of the reasons for the proposed liquidation.

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

Sec. 126.453. NOTICE OF MEETING TO LIQUIDATE. Notice of the special meeting to consider voluntary liquidation shall be mailed by

first-class mail to each member of the credit union and the commissioner not later than the 10th day before the date of the meeting.

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

Sec. 126.454. CREDIT UNION OPERATIONS BEFORE AND AFTER VOTE. Immediately after notice under Section 126.453 is mailed, the commissioner may restrict control or give direction with respect to the continued business of the credit union pending consideration of voluntary liquidation by the members. During that period, no member shall withdraw an aggregate amount in excess of the share insurance covered by the credit union. No new extensions of credit shall be funded during the period between the board of directors' adoption of the resolution recommending voluntary liquidation and the membership meeting called to consider voluntary liquidation, except for the issuance of loans fully secured by a pledge of shares and the funding of outstanding loan commitments approved before adoption of the resolution. If the vote to dissolve and liquidate the credit union is affirmative, the credit union may conduct only business incidental to liquidation.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 52, eff. Sept. 1, 2003.

Sec. 126.455. VOTE ON VOLUNTARY LIQUIDATION. At a special meeting called to consider the proposed liquidation, a majority of the credit union members voting, but not less than a quorum, may vote to dissolve and liquidate the credit union. Those members casting votes by mail or at the meeting constitute a quorum for the transaction of business at the special meeting, notwithstanding a bylaw provision to the contrary.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 53, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 19 (S.B. 244), Sec. 24, eff. September 1, 2013.

Sec. 126.456. NOTICE TO COMMISSIONER OF AFFIRMATIVE VOTE TO LIQUIDATE. (a) The board's presiding officer or president and the secretary shall notify the commissioner of the intention to liquidate not later than the fifth day after the affirmative vote to dissolve and liquidate.

(b) The person notifying the commissioner must include a list of the names and addresses of the credit union's officers and directors with the notice.

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

Sec. 126.457. APPOINTMENT OF LIQUIDATING AGENT. (a) If the members approve the liquidation, the board shall appoint a liquidating agent to:

(1) conserve and collect the credit union's assets;

(2) wind up the credit union's affairs;

(3) discharge the credit union's debts;

(4) distribute the credit union's assets; and

(5) take any other action necessary and incidental to liquidating the credit union.

(b) The National Credit Union Administration or other insuring organization has the right of first refusal to be appointed as liquidating agent of any credit union that it insures.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 533, Sec. 54, eff. Sept. 1, 2003.

Sec. 126.458. APPLICATION OF LAW TO CREDIT UNION IN VOLUNTARY LIQUIDATION. A credit union in the process of voluntary dissolution and liquidation remains subject to this subtitle and Chapter 15, including provisions for examination by the commissioner, and the credit union shall furnish reports as required by the commissioner.

Added by Acts 2003, 78th Leg., ch. 533, Sec. 55, eff. Sept. 1, 2003.

CHAPTER 149. MISCELLANEOUS PROVISIONS RELATING TO CREDIT UNIONS

Sec. 149.001. APPLICABILITY OF CHAPTERS 3 AND 4, BUSINESS & COMMERCE CODE. (a) Chapters 3 and 4, Business & Commerce Code,

determine the rights, responsibilities, and liabilities of a person regarding an item drawn on, transferred to, or presented, remitted, collected, settled, negotiated, or otherwise handled by a credit union as if the credit union were a bank, unless otherwise provided by written agreement of the parties.

(b) In this section:

(1) "Credit union" means a credit union authorized to do business in this state under this subtitle or the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.).

(2) "Item":

(A) means an instrument, whether or not negotiable, for the payment of money; and

(B) does not include money.

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

Sec. 149.002. EXEMPTION FROM SECURITIES LAWS. (a) Except as required by this subtitle, a credit union authorized to do business under this subtitle or the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.) and an officer, employee, or agent of the credit union engaged in selling, issuing, or offering a security issued by a state or federal credit union are exempt from a law of this state to the extent the law provides for supervision, registration, or regulation in connection with selling, issuing, or offering a security.

(b) The sale, issuance, or offering of a security issued by a state or federal credit union is legal without any action or approval by any official, other than the credit union commissioner, who is authorized to license, regulate, or supervise the sale, issuance, or offering of securities.

Text of subsection effective until January 1, 2022

(c) In this section, "security" has the meaning assigned by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes).

Text of subsection effective on January 1, 2022

(c) In this section, "security" has the meaning assigned by Section 4001.068, Government Code.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.14, eff. January 1, 2022.

SUBTITLE E. OTHER FINANCIAL BUSINESSES
CHAPTER 151. REGULATION OF MONEY SERVICES BUSINESSES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 151.001. SHORT TITLE. This chapter may be cited as the Money Services Act.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.002. DEFINITIONS. (a) This section defines general terms that apply to an applicant for or holder of a money services license issued under this chapter, regardless of whether the license is a money transmission license or a currency exchange license. Additional terms that apply specifically to money transmission are defined in Section 151.301. Additional terms that apply specifically to currency exchange are defined in Section 151.501.

(b) In this chapter:

(1) "Applicant" means a person that files an application for a license under this chapter.

(2) "Authorized delegate" means a person a license holder appoints under Section 151.402 to conduct money transmission on behalf of the license holder.

(3) "Bank Secrecy Act" means the Bank Secrecy Act (31 U.S.C. Section 5311 et seq.), and its implementing regulations.

(4) "Commission" means the Finance Commission of Texas.

(5) "Commissioner" means the Banking Commissioner of Texas or a person designated by the banking commissioner and acting under the banking commissioner's direction and authority.

(6) "Control" means ownership of, or the power to directly or indirectly vote, 25 percent or more of the outstanding voting interests of a license holder or applicant, and includes an individual whose ownership is through one or more legal entities.

(7) "Currency exchange" has the meaning assigned by Section 151.501.

(8) "Currency exchange license" means a license issued under Subchapter F.

(9) "Department" means the Texas Department of Banking.

(9-a) Repealed by Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 23, eff. May 24, 2019.

(9-b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 23, eff. May 24, 2019.

(9-c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 23, eff. May 24, 2019.

(10) "Executive officer" means a president, a presiding officer of the executive committee, a treasurer or chief financial officer, or any other individual who performs similar functions.

(11) "License holder" means a person that holds a money transmission license or a currency exchange license.

(12) "Location" means a place at which activity regulated by this chapter occurs.

(13) "Material litigation" means any litigation that, according to generally accepted accounting principles, is considered significant to an applicant's or license holder's financial health and would be required to be referenced in that entity's audited financial statements, report to shareholders, or similar documents.

(14) "Money services" means money transmission or currency exchange services.

(15) "Money transmission" has the meaning assigned by Section 151.301.

(16) "Money transmission license" means a license issued under Subchapter D.

(17) "Person" means an individual or legal entity.

(18) "Principal" means:

(A) with respect to a sole proprietorship, an owner; or

(B) with respect to a legal entity other than a sole proprietorship, an executive officer, director, general partner, trustee, or manager, as applicable.

(19) "Record" means information that is:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

(20) "Responsible individual" means an individual who has direct control over or significant management policy and decision-making authority with respect to a license holder's ongoing, daily

money services operations in this state.

(20-a) "Tangible net worth" means the total value of all assets, minus any liabilities and intangible assets.

(21) "USA PATRIOT ACT" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Pub. L. No. 107-56, 115 Stat. 272).

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 988 (H.B. 2134), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 2, eff. June 19, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 3, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 428 (S.B. 1403), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 1, eff. May 24, 2019.

Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 2, eff. May 24, 2019.

Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 23(1), eff. May 24, 2019.

Sec. 151.003. EXCLUSIONS. The following persons are not required to be licensed under this chapter:

(1) the United States or an instrumentality of the United States, including the United States Post Office or a contractor acting on behalf of the United States Post Office;

(2) a state or an agency, political subdivision, or other instrumentality of a state;

(3) a federally insured financial institution, as that term is defined by Section 201.101, that is organized under the laws of this state, another state, or the United States;

(4) a foreign bank branch or agency in the United States established under the federal International Banking Act of 1978 (12 U.S.C. Section 3101 et seq.);

(5) a person acting as an agent for an entity excluded under Subdivision (3) or (4), to the extent of the person's actions in that capacity, provided that:

(A) the entity is liable for satisfying the money services obligation owed to the purchaser on the person's receipt of the purchaser's money; and

(B) the entity and person enter into a written contract that appoints the person as the entity's agent and the person acts only within the scope of authority conferred by the contract;

(6) a person that, on behalf of the United States or a department, agency, or instrumentality of the United States, or a state or county, city, or any other governmental agency or political subdivision of a state, provides electronic funds transfer services of governmental benefits for a federal, state, county, or local governmental agency;

(7) a person that acts as an intermediary on behalf of and at the direction of a license holder in the process by which the license holder, after receiving money or monetary value from a purchaser, either directly or through an authorized delegate, transmits the money or monetary value to the purchaser's designated recipient, provided that the license holder is liable for satisfying the obligation owed to the purchaser;

(8) an attorney or title company that in connection with a real property transaction receives and disburses domestic currency or issues an escrow or trust fund check only on behalf of a party to the transaction;

(9) a person engaged in the business of currency transportation who is both a registered motor carrier under Chapter 643, Transportation Code, and a licensed armored car company or courier company under Chapter 1702, Occupations Code, provided that the person:

(A) only transports currency:

(i) from a person to the same person at another location;

(ii) from a person to a financial institution to be deposited in an account belonging to the same person; or

(iii) to a person from a financial institution after being withdrawn from an account belonging to the same person; and

(B) does not otherwise engage in the money transmission

or currency exchange business without a license issued under this chapter;

(9-a) a trust company, as defined by Section 187.001(a), that is organized under the laws of this state; and

(10) any other person, transaction, or class of persons or transactions exempted by commission rule or any other person or transaction exempted by the commissioner's order on a finding that the licensing of the person is not necessary to achieve the purposes of this chapter.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 75 (S.B. 899), Sec. 1, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 4, eff. June 19, 2015.
Reenacted and amended by Acts 2017, 85th Leg., R.S., Ch. 428 (S.B. 1403), Sec. 2, eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 3, eff. May 24, 2019.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 151.101. ADMINISTRATION. The department shall administer this chapter.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.102. RULES. (a) The commission may adopt rules to administer and enforce this chapter, including rules necessary or appropriate to:

(1) implement and clarify this chapter;

(2) preserve and protect the safety and soundness of money services businesses;

(3) protect the interests of purchasers of money services and the public;

(4) protect against drug trafficking, terrorist funding,

and money laundering, structuring, or a related financial crime; and

(5) recover the cost of maintaining and operating the department and the cost of administering and enforcing this chapter and other applicable law by imposing and collecting proportionate and equitable fees and costs for notices, applications, examinations, investigations, and other actions required to achieve the purposes of this chapter.

(b) The presence or absence of a specific reference in this chapter to a rule regarding a particular subject is not intended to and does not limit the general rulemaking authority granted to the commission by this section.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.103. COMMISSIONER'S GENERAL AUTHORITY. (a) Each power granted to the commissioner under this chapter is in addition to, and not in limitation of, each other power granted under this chapter. The fact that the commissioner possesses, or has exercised, a power under a provision of this chapter does not preclude the commissioner from exercising a power under any other provision of this chapter.

(b) Each power granted to the commissioner under this chapter is in addition to, and not in limitation of, powers granted to the commissioner under other law. The fact that the commissioner possesses, or has exercised, a power under any other provision of law does not preclude the commissioner from exercising any power under this chapter. The fact that the commissioner possesses, or has exercised, a power under a provision of this chapter does not preclude the commissioner from exercising a power under any other law.

(c) The commissioner may impose on any authority, approval, exemption, license, or order issued or granted under this chapter any condition the commissioner considers reasonably necessary or appropriate to carry out and achieve the purposes of this chapter.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.104. INVESTIGATIONS. (a) The commissioner may conduct investigations in or outside this state and the United States as the commissioner considers necessary or appropriate to administer and enforce this chapter, including investigations to:

(1) determine whether to approve an application for a license or a request for approval or exemption filed under this chapter or a rule adopted or order issued under this chapter;

(2) determine whether a person has violated or is likely to violate this chapter or a rule adopted or order issued under this chapter;

(3) determine whether a license or authorized delegate designation should be revoked or suspended;

(4) otherwise aid in the enforcement of this chapter or a rule adopted or order issued under this chapter; and

(5) aid in the adoption of rules or issuance of orders under this chapter.

(b) For purposes of an investigation, examination, or other proceeding under this chapter, the commissioner may administer or cause to be administered oaths, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any document that the commissioner determines to be relevant to the inquiry.

(c) If a person refuses to obey a subpoena, a district court of Travis County, on application by the commissioner, may issue an order requiring the person to appear before the commissioner and produce documents or give evidence regarding the matter under investigation.

(d) The commissioner may employ a person or request the attorney general, the Department of Public Safety, or any other state, federal, or local law enforcement agency to assist in enforcing this chapter.

(e) The commissioner may recover the reasonable costs incurred in connection with an investigation conducted under this chapter from the person that is the subject of the investigation.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 988 (H.B. 2134), Sec. 2, eff. September 1, 2013.

Sec. 151.105. REGULATORY COOPERATION. (a) To efficiently and effectively administer and enforce this chapter and to minimize regulatory burden, the commissioner may cooperate, coordinate, and share information with another state, federal, or foreign governmental agency that:

(1) regulates or supervises persons engaged in money services businesses or activities subject to this chapter; or

(2) is authorized to investigate or prosecute violations of a state, federal, or foreign law related to persons engaged in money services businesses or activities subject to this chapter, including a state attorney general's office.

(b) The commissioner, with respect to an agency described by and for the purposes set forth in Subsection (a), may:

(1) enter into a written cooperation, coordination, or information-sharing contract or agreement with the agency;

(2) share information with the agency, subject to the confidentiality provisions of Section 151.606(b)(3);

(3) conduct a joint or concurrent on-site examination or other investigation or enforcement action with the agency;

(4) accept a report of examination or investigation by, or a report submitted to, the agency, in which event the accepted report is an official report of the commissioner for all purposes;

(5) engage the services of the agency to assist the commissioner in performing or discharging a duty or responsibility imposed by this chapter or other law and pay a reasonable fee for the services;

(6) share with the agency any supervisory or examination fees assessed against a license holder or authorized delegate under this chapter and receive a portion of supervisory or examination fees assessed by the agency against a license holder or authorized delegate; and

(7) take other action as the commissioner considers reasonably necessary or appropriate to carry out and achieve the purposes of this chapter.

(b-1) To efficiently and effectively administer and enforce this chapter and to minimize regulatory burden, the commissioner may cooperate, coordinate, and share information with an organization the membership of which is made up of state or federal governmental agencies described by Subsection (a). The commissioner may:

(1) enter into a written cooperation, coordination, or

information-sharing contract or agreement with the organization; and

(2) share information, provided that the organization agrees in writing to maintain the confidentiality and security of the shared information.

(c) The commissioner may not waive, and nothing in this section constitutes a waiver of, the commissioner's authority to conduct an examination or investigation or otherwise take independent action authorized by this chapter or a rule adopted or order issued under this chapter to enforce compliance with applicable state or federal law.

(d) A joint examination or investigation, or acceptance of an examination or investigation report, does not waive an examination assessment provided for in this chapter.

(e) Chapter 2254, Government Code, does not apply to a contract or agreement entered into under this section.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 988 (H.B. 2134), Sec. 3, eff. September 1, 2013.

Sec. 151.106. CONSENT TO SERVICE OF PROCESS. A license holder, an authorized delegate, or a person who knowingly engages in activities that are regulated and require a license under this chapter, with or without filing an application for a license or holding a license under this chapter, is considered to have consented to the jurisdiction of the courts of this state for all actions arising under this chapter.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

SUBCHAPTER C. GENERAL QUALIFICATIONS AND PROVISIONS APPLICABLE TO MONEY SERVICES LICENSES

Sec. 151.201. SCOPE. This subchapter sets out the general qualifications and provisions that apply to a money services license, regardless of whether the license is a money transmission license or a currency exchange license. Subchapters D and E set forth the

additional qualifications and provisions that apply specifically to a money transmission license. Subchapter F sets forth the additional qualifications and provisions that apply specifically to a currency exchange license.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 5, eff. June 19, 2015.
Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 4, eff. May 24, 2019.

Sec. 151.202. QUALIFICATIONS FOR LICENSE. (a) Subject to Subsections (b) and (c), to qualify for a license under this chapter, an applicant must demonstrate to the satisfaction of the commissioner that:

(1) the financial responsibility and condition, financial and business experience, competence, character, and general fitness of the applicant justify the confidence of the public and warrant the belief that the applicant will conduct business in compliance with this chapter and the rules adopted under this chapter and other applicable state and federal law;

(2) the issuance of the license is in the public interest;

(3) the applicant, a principal of the applicant, or a person in control of the applicant does not owe the department a delinquent fee, assessment, administrative penalty, or other amount imposed under this chapter or a rule adopted or order issued under this chapter;

(4) the applicant, if a partnership, and any partner that would generally be liable for the obligations of the partnership, does not owe a delinquent federal tax;

(5) the applicant, if a corporation:

(A) is in good standing and statutory compliance in the state or country of incorporation;

(B) is authorized to engage in business in this state; and

(C) does not owe any delinquent franchise or other taxes to this state;

(6) the applicant, if not a corporation, is properly registered under the laws of this state or another state or country and, if required, is authorized to engage in business in this state; and

(7) the applicant, a principal of the applicant, or a principal of a person in control of the applicant is not listed on the specifically designated nationals and blocked persons list prepared by the United States Department of the Treasury, or designated successor agency, as a potential threat to commit or fund terrorist acts.

(b) In determining whether an applicant has demonstrated satisfaction of the qualifications identified in Subsection (a)(1), the commissioner shall consider the financial responsibility and condition, financial and business experience, competence, character, and general fitness of each principal of, person in control of, principal of a person in control of, and proposed responsible individual of the applicant and may deny approval of the application on the basis that the applicant has failed to demonstrate satisfaction of the requisite qualifications with respect to one or more of those persons.

(c) The commissioner may not issue a license to an applicant if the applicant or one of the following persons has been convicted within the preceding 10 years of a criminal offense specified in Subsection (e):

(1) if the applicant is an individual, the spouse or proposed responsible individual or individuals of the applicant;

(2) if the applicant is an entity that is wholly owned, directly or indirectly, by a single individual, the spouse of the individual; or

(3) if the applicant is a person other than an individual, a principal of, person in control of, principal of a person in control of, or proposed responsible individual or individuals of the applicant.

(d) The commissioner, on a finding that the conviction does not reflect adversely on the present likelihood that the applicant will conduct business in compliance with this chapter, rules adopted under this chapter, and other applicable state and federal law, may waive a disqualification under Subsection (c) based on the conviction of a spouse or a corporate applicant or corporate person in control of an applicant.

(e) For purposes of Subsection (c), a disqualifying conviction is a conviction for a felony criminal offense:

(1) under state or federal law that involves or relates to:

(A) deception, dishonesty, or defalcation;

(B) money transmission or other money services, including a reporting, recordkeeping or registration requirement of the Bank Secrecy Act, the USA PATRIOT ACT, or Chapter 271;

(C) money laundering, structuring, or a related financial crime;

(D) drug trafficking; or

(E) terrorist funding; and

(2) under a similar law of a foreign country unless the applicant demonstrates to the satisfaction of the commissioner that the conviction was based on extenuating circumstances unrelated to the person's reputation for honesty and obedience to law.

(f) For purposes of Subsection (c), a person is considered to have been convicted of an offense if the person has been found guilty or pleaded guilty or nolo contendere to the charge or has been placed on probation or deferred adjudication without regard to whether a judgment of conviction has been entered by the court.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.203. APPLICATION FOR LICENSE. (a) An application for a license under this chapter must be made under oath and in the form and medium required by the commissioner. The application must contain:

(1) the legal name and residential and business address of the applicant and each principal of the applicant;

(2) the taxpayer identification number, social security number, driver's license number, or other identifying information the commissioner requires of the applicant and each principal of the applicant; and

(3) any other information or documentation the commissioner reasonably requires to determine whether the applicant qualifies for and should be issued the license for which application is made.

(b) The commissioner, at the time the application is submitted or in connection with an investigation of the application under

Section 151.204, may require the applicant, the spouse of the applicant, a principal of, individual who is a person in control of, or proposed responsible individual of the applicant, or any other individual associated with the applicant and the proposed licensed activities, to provide the department a complete set of fingerprints for purposes of a criminal background investigation.

(c) An applicant must certify in writing on the application that the applicant and each principal of, person in control of, and proposed responsible individual of the applicant:

(1) is familiar with and agrees to fully comply with all applicable state and federal laws and regulations pertaining to the applicant's proposed money services business, including this chapter, relevant provisions of the Bank Secrecy Act, the USA PATRIOT ACT, and Chapter 271;

(2) has not within the preceding three years knowingly failed to file or evaded the obligation to file a report, including a currency transaction or suspicious activity report required by the Bank Secrecy Act, the USA PATRIOT ACT, or Chapter 271; and

(3) has not knowingly accepted money for transmission or exchange in which a portion of the money was derived from an illegal transaction or activity.

(d) The commissioner may waive an application requirement or permit the submission of substituted information in lieu of the information generally required in an application, either with respect to a specific applicant or a category of applicants, if the commissioner determines that the waiver or substitution of information is consistent with achievement of the purposes of this chapter.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.2031. USE OF NATIONWIDE MULTISTATE LICENSING SYSTEM AND REGISTRY. (a) In this section, "Nationwide Multistate Licensing System and Registry" or "nationwide registry" means a licensing system developed and maintained by the Conference of State Bank Supervisors or an affiliated organization to manage mortgage licenses and other financial services licenses, or a successor registry.

(b) The commissioner may require that a person submit through

the Nationwide Multistate Licensing System and Registry in the form and manner prescribed by the commissioner and acceptable to the registry any information or document or payment of a fee required to be submitted under this chapter or rules adopted under this chapter.

(c) The commissioner may use the nationwide registry as a channeling agent for obtaining information required for licensing purposes under this chapter or rules adopted under this chapter, including:

(1) criminal history record information from the Federal Bureau of Investigation, the United States Department of Justice, or any other agency or entity at the commissioner's discretion;

(2) information related to any administrative, civil, or criminal findings by a governmental jurisdiction; and

(3) information requested by the commissioner under Section 151.203(a)(3).

Added by Acts 2013, 83rd Leg., R.S., Ch. 988 (H.B. 2134), Sec. 4, eff. September 1, 2013.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 428 (S.B. 1403), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 428 (S.B. 1403), Sec. 4, eff. September 1, 2017.

Sec. 151.204. PROCESSING AND INVESTIGATION OF APPLICATION. (a) An application for a license under this chapter shall be processed and acted on according to the time periods established by commission rule.

(b) On receipt of an application that meets the requirements of Section 151.203 and Section 151.304 or 151.504, as applicable, the commissioner shall investigate the applicant to determine whether the prescribed qualifications have been met. The commissioner may:

(1) conduct an on-site investigation of the applicant;

(2) employ a screening service to assist with the investigation;

(3) to the extent the commissioner considers reasonably necessary to evaluate the application and the applicant's qualifications, investigate the financial responsibility and condition, financial and business experience, character and general

fitness of each principal of, person in control of, principal of a person in control of, or proposed responsible individual of the applicant or any other person that is or will be associated with the applicant's licensed activities in this state; or

(4) require additional information and take other action the commissioner considers reasonably necessary.

(c) The commissioner may collect from the applicant the reasonable expenses of an on-site examination or third-party investigation. Additionally, depending on the nature and extent of the investigation required in connection with a particular application, the commissioner may require an applicant to pay a nonrefundable investigation fee in an amount established by commission rule.

(d) The commissioner may suspend consideration of an application for a license if the applicant or a principal of, person in control of, or proposed responsible individual of the applicant is the subject of a pending state or federal criminal prosecution, state or federal government enforcement action, or state or federal asset forfeiture proceeding until the conclusion of the prosecution, action, or proceeding.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.205. ISSUANCE OF LICENSE. (a) The commissioner shall issue a license if the commissioner, with respect to the license for which application has been made, finds that:

(1) the applicant meets the prescribed qualifications and it is reasonable to believe that the applicant's business will be conducted fairly and lawfully, according to applicable state and federal law, and in a manner commanding the public's trust and confidence;

(2) the issuance of the license is in the public interest;

(3) the documentation and forms required to be submitted by the applicant are acceptable; and

(4) the applicant has satisfied all requirements for licensure.

(b) If the commissioner finds that the applicant for any reason fails to possess the qualifications or satisfy the requirements for

the license for which application is made, the commissioner shall inform the applicant in writing that the application is denied and state the reasons for the denial. The applicant may appeal the denial by filing a written request for a hearing with the commissioner not later than the 30th day after the date the notice is mailed. A hearing on the denial must be held not later than the 45th day after the date the commissioner receives the written request unless the administrative law judge extends the period for good cause or the parties agree to a later hearing date. The hearing is considered a contested case hearing and is subject to Section 151.801.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.206. TRANSFER OR ASSIGNMENT OF LICENSE. A license issued under this chapter may not be transferred or assigned.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.207. CONTINUATION OF LICENSE; ANNUAL REPORT AND FEE. (a) If a license holder does not continue to meet the qualifications or satisfy the requirements that apply to an applicant for a new money transmission license or currency exchange license, as applicable, the commissioner may suspend or revoke the license holder's license.

(b) In addition to complying with Subsection (a), a license holder must annually:

(1) pay a license fee in an amount established by commission rule; and

(2) submit a report that is under oath, is in the form and medium required by the commissioner, and contains:

(A) if the license is a money transmission license, an audited unconsolidated financial statement dated as of the last day of the license holder's fiscal year that ended in the immediately preceding calendar year;

(B) if the license is a currency exchange license, a financial statement, audited or unaudited, dated as of the last day

of the license holder's fiscal year that ended in the immediately preceding calendar year; and

(C) documentation and certification, or any other information the commissioner reasonably requires to determine the security, net worth, permissible investments, and other requirements the license holder must satisfy and whether the license holder continues to meet the qualifications and requirements for licensure.

(c) If the department does not receive a license holder's annual license fee and complete annual report on or before the due date prescribed by the commissioner under this section, the commissioner shall notify the license holder in writing that:

(1) the license holder shall submit the report and pay the license fee not later than the 45th day after the due date prescribed by the commissioner; and

(2) the license holder must pay a late fee, in an amount that is established by commission rule and not subject to appeal, for each business day after the report due date specified by the commissioner that the commissioner does not receive the completed report and license fee.

(d) If the license holder fails to submit the completed annual report and pay the annual license fee and any late fee due within the time prescribed by Subsection (c)(1), the license expires, and the license holder must cease and desist from engaging in the business of money transmission or currency exchange, as applicable, as of that date. The expiration of a license is not subject to appeal.

(e) On timely receipt of a license holder's complete annual report, annual license fee, and any late fee due, the department shall review the report and, if necessary, investigate the business and records of the license holder. On completion of the review and investigation, if any, the commissioner may:

(1) impose conditions on the license the commissioner considers reasonably necessary or appropriate; or

(2) suspend or revoke the license on the basis of a ground specified in Section 151.703.

(f) On written application and for good cause shown, the commissioner may extend the due date for filing the annual license fee and annual report required under this section.

(g) The holder or principal of or the person in control of the holder of an expired license, or the holder or principal of or person in control of the holder of a license surrendered under Section

151.208, that wishes to conduct activities for which a license is required under this chapter must file a new license application and satisfy all requirements for licensure that apply at the time the new application is filed.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 988 (H.B. 2134), Sec. 5, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 988 (H.B. 2134), Sec. 6, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 6, eff. June 19, 2015.
Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 5, eff. May 24, 2019.

Sec. 151.208. SURRENDER OF LICENSE. (a) A license holder may surrender the license holder's license by delivering the original license to the commissioner along with a written notice of surrender that includes the location at which the license holder's records will be stored and the name, address, telephone number, and other contact information for an individual who is authorized to provide access to the records.

(b) A license holder shall surrender the license holder's license if the license holder becomes ineligible for a license under Section 151.202(c).

(c) The surrender of a license does not reduce or eliminate a license holder's civil or criminal liability arising from any acts or omissions before the surrender of the license, including any administrative action undertaken by the commissioner to revoke or suspend a license, to assess an administrative penalty, to order the payment of restitution, or to exercise any other authority under this chapter. Further, the surrender of a license does not release the security required of the license holder under Section 151.308 or 151.506.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 988 (H.B. 2134), Sec. 7, eff. September 1, 2013.

Sec. 151.209. REFUNDS. A fee or cost paid under this chapter is not refundable.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 988 (H.B. 2134), Sec. 8, eff. September 1, 2013.

SUBCHAPTER D. MONEY TRANSMISSION LICENSE

Sec. 151.301. DEFINITIONS. (a) This section defines terms that apply to an applicant for or holder of a money transmission license issued under this subchapter.

(b) In this subchapter:

(1) "Currency" means the coin and paper money of the United States or another country that is designated as legal tender and circulates and is customarily used and accepted as a medium of exchange in the country of issuance.

(2) "Electronic instrument" means a card or other tangible object for the transmission, transfer, or payment of money or monetary value, that contains an electronic chip or strip for the storage of information or that provides access to information.

(3) "Money" or "monetary value" means currency or a claim that can be converted into currency through a financial institution, electronic payments network, or other formal or informal payment system.

(4) "Money transmission" means the receipt of money or monetary value by any means in exchange for a promise to make the money or monetary value available at a later time or different location. The term:

(A) includes:

(i) selling or issuing stored value or payment instruments, including checks, money orders, and traveler's checks;

(ii) receiving money or monetary value for transmission, including by payment instrument, wire, facsimile,

electronic transfer, or ACH debit;

(iii) providing third-party bill paying services; or

(iv) receiving currency or an instrument payable in currency to physically transport the currency or its equivalent from one location to another by motor vehicle or other means of transportation or through the use of the mail or a shipping, courier, or other delivery service; and

(B) does not include the provision solely of online or telecommunication services or connection services to the Internet.

(5) "Outstanding" means:

(A) with respect to a payment instrument or stored value, a payment instrument or stored value that has been issued and sold in the United States directly by the license holder, or sold by an authorized delegate of the license holder in the United States and reported to the license holder, that has not yet been paid by or for the license holder; or

(B) with respect to transmission, a money transmission for which the license holder, directly or through an authorized delegate of the license holder, has received money or monetary value from the customer for transmission, but has not yet completed the money transmission by delivering the money or monetary value to the person designated by the customer or refunded the money or monetary value to the customer.

(6) "Payment instrument" means a written or electronic equivalent of a check, draft, money order, traveler's check, or other written or electronic instrument, service, or device for the transmission or payment of money or monetary value, sold or issued to one or more persons, regardless of whether negotiable. The term does not include an instrument, service, or device that:

(A) transfers money directly from a purchaser to a creditor of the purchaser or to an agent of the creditor;

(B) is redeemed by the issuer in goods or services or a cash or credit refund under circumstances not designed to evade the obligations and responsibilities imposed by this chapter; or

(C) is a credit card voucher or letter of credit.

(7) Repealed by Acts 2015, 84th Leg., R.S., Ch. 75 , Sec. 7, eff. September 1, 2015.

(8) "Stored value" means monetary value evidenced by an electronic record that is prefunded and for which value is reduced on

each use. The term includes prepaid access as defined by 31 C.F.R. Section 1010.100(ww). The term does not include an electronic record that is:

(A) loaded with points, miles, or other nonmonetary value;

(B) not sold to the public but distributed as a reward or charitable donation; or

(C) redeemable only for goods or services from a specified merchant or set of affiliated merchants, such as:

(i) a specified retailer or retail chain;

(ii) a set of affiliated companies under common ownership;

(iii) a college campus; or

(iv) a mass transportation system.

(9) "Unsafe or unsound act or practice" means a practice of or conduct by a license holder or an authorized delegate of the license holder that creates the likelihood of material loss, insolvency, or dissipation of the license holder's assets, or that otherwise materially prejudices the interests of the license holder or the license holder's customers.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 988 (H.B. 2134), Sec. 9, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 75 (S.B. 899), Sec. 7, eff. September 1, 2015.

Sec. 151.302. LICENSE REQUIRED. (a) A person may not engage in the business of money transmission in this state or advertise, solicit, or represent that the person engages in the business of money transmission in this state unless the person:

(1) is licensed under this subchapter;

(2) is an authorized delegate of a person licensed under this subchapter, appointed by the license holder in accordance with Section 151.402;

(3) is excluded from licensure under Section 151.003; or

(4) has been granted an exemption under Subsection (c).

(b) For purposes of this chapter, a person engages in the business of money transmission if the person receives compensation or expects to receive compensation, directly or indirectly, for conducting money transmission.

(c) On application and a finding that the exemption is in the public interest, the commissioner may exempt a person that:

(1) incidentally engages in the money transmission business only to the extent reasonable and necessary to accomplish a primary business objective unrelated to the money transmission business;

(2) does not advertise or offer money transmission services to the public except to the extent reasonable and necessary to fairly advertise or offer the person's primary business services; and

(3) transmits money without a fee as an inducement for customer participation in the person's primary business.

(d) A license holder may engage in the money transmission business at one or more locations in this state owned, directly or indirectly by the license holder, or through one or more authorized delegates, or both, under a single license granted to the license holder.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 75 (S.B. 899), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 7, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 428 (S.B. 1403), Sec. 5, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 6, eff. May 24, 2019.

Sec. 151.303. ADDITIONAL QUALIFICATIONS. In addition to the general qualifications for licensure set forth in Section 151.202, an applicant for a money transmission license must demonstrate to the satisfaction of the commissioner that:

(1) the applicant has and will maintain the minimum net worth required under Section 151.307;

(2) the applicant's financial condition will enable the

applicant to safely and soundly engage in the business of money transmission; and

(3) the applicant does not engage in any activity or practice that adversely affects the applicant's safety and soundness.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.304. APPLICATION AND ACCOMPANYING FEE, STATEMENTS, AND SECURITY. (a) An applicant for a money transmission license must submit an application in accordance with Section 151.203.

(b) At the time an application for a money transmission license is submitted, an applicant must file with the department:

(1) an application fee in the amount established by commission rule;

(2) audited financial statements that are satisfactory to the commissioner for purposes of determining whether the applicant has the minimum net worth required under Section 151.307 and is likely to maintain the required minimum net worth if a license is issued; and

(3) security that meets the requirements of Section 151.308, and an undertaking or agreement that the applicant will increase or supplement the security to equal the aggregate security required by the commissioner under that section before the issuance of the license and the start of operations.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 428 (S.B. 1403), Sec. 6, eff. September 1, 2017.

Sec. 151.305. INVESTIGATION AND ACTION ON APPLICATION. The commissioner shall investigate the applicant and act on the application in accordance with Sections 151.204 and 151.205.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.306. TEMPORARY LICENSE. (a) The commissioner may issue a temporary license to a person that is engaging in money transmission, but has not obtained a license under this subchapter, if the person:

(1) certifies in writing that the person qualifies for the license and will submit a completed license application not later than the 60th day after the date the temporary license is issued;

(2) submits a recent financial statement acceptable to the commissioner that reflects the minimum net worth required under Section 151.307;

(3) provides security that meets the requirements of Section 151.308 in an amount specified by the commissioner, but not less than $300,000;

(4) agrees in writing that, until a permanent license is issued, the person will engage only in activities being conducted at existing locations; and

(5) pays the application fee and a nonrefundable temporary license fee in the amount established by commission rule.

(b) The effective period for a temporary license may not exceed 90 days from the date the license is issued, provided that the commissioner may extend the period for not more than an additional 90 days if necessary to complete the processing of a timely filed application for which approval is likely.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 988 (H.B. 2134), Sec. 10, eff. September 1, 2013.

Sec. 151.307. NET WORTH. (a) An applicant for a money transmission license must possess, and a money transmission license holder must maintain at all times, a minimum net worth computed in accordance with generally accepted accounting principles of:

(1) $100,000, if business is proposed to be or is conducted, directly or through an authorized delegate, at four or fewer locations; or

(2) $500,000, if business is proposed to be or is conducted, directly or through an authorized delegate, at five or

more locations or over the Internet.

(b) The commissioner may increase the amount of net worth required of an applicant or license holder, up to a maximum of $1 million, if the commissioner determines, with respect to the applicant or license holder, that a higher net worth is necessary to achieve the purposes of this chapter based on:

(1) the nature and volume of the projected or established business;

(2) the number of locations at or through which money transmission is or will be conducted;

(3) the amount, nature, quality, and liquidity of its assets;

(4) the amount and nature of its liabilities;

(5) the history of its operations and prospects for earning and retaining income;

(6) the quality of its operations;

(7) the quality of its management;

(8) the nature and quality of its principals and persons in control;

(9) the history of its compliance with applicable state and federal law; and

(10) any other factor the commissioner considers relevant.

(c) At least 50 percent of the applicant's or license holder's total net worth under this section must be tangible net worth.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 428 (S.B. 1403), Sec. 7, eff. September 1, 2017.

Sec. 151.308. SECURITY. (a) An applicant for a money transmission license must provide, and a money transmission license holder must maintain at all times, security consisting of a surety bond, an irrevocable letter of credit, or a deposit instead of a bond in accordance with this section.

(b) The amount of the required security is the greater of $300,000 or an amount equal to one percent of the license holder's total yearly dollar volume of money transmission business in this

state or the applicant's projected total volume of business in this state for the first year of licensure, up to a maximum of $2 million.

(b-1) The commissioner may increase the amount of security required of an applicant who intends to provide, or a license holder who is providing, third-party bill payments in conjunction with loan acceleration services, up to a total amount of $2 million, by multiplying the amount of security required under this section by a factor of up to two, if the commissioner determines, with respect to the applicant or license holder, that a higher amount of the required security is necessary to achieve the purposes of this chapter based on the factors listed under Section 151.307(b).

(b-2) When the amount of the required security exceeds $1 million, the applicant or license holder may, in the alternative, provide security in the amount of $1 million, plus a dollar for dollar increase in the net worth of the applicant or license holder over the amount required under Section 151.307, up to a total amount of $2 million.

(c) The security must:

(1) be in a form satisfactory to the commissioner;

(2) be payable to any claimant or to the commissioner, on behalf of a claimant or this state, for any liability arising out of the license holder's money transmission business in this state, incurred under, subject to, or by virtue of this chapter; and

(3) if the security is a bond, be issued by a qualified surety company authorized to engage in business in this state and acceptable to the commissioner or, if the security is an irrevocable letter of credit, be issued by a financial institution acceptable to the commissioner.

(d) A claimant may bring suit directly on the security, or the commissioner may bring suit on behalf of the claimant or the state, either in one action or in successive actions.

(e) The commissioner may collect from the security or proceeds of the security any delinquent fee, assessment, cost, penalty, or other amount imposed on and owed by a license holder. If the security is a surety bond, the commissioner shall give the surety reasonable prior notice of a hearing to impose an administrative penalty against the license holder, provided that a surety may not be considered an interested, aggrieved, or affected person for purposes of an administrative proceeding under Section 151.801 or Chapter 2001, Government Code.

(f) The security remains in effect until canceled, which may occur only after providing 30 days' written notice to the commissioner. Cancellation does not affect any liability incurred or accrued during the period covered by the security.

(g) The security shall cover claims for at least five years after the license holder surrenders its license or otherwise ceases to engage in activities for which a license is required under this subchapter. However, the commissioner may permit the amount of the security to be reduced or eliminated before that time to the extent that the amount of the license holder's obligations to the department and to purchasers in this state is reduced. The commissioner may permit a license holder to substitute another form of security when the license holder ceases to provide money transmission in this state.

(h) If the commissioner at any time reasonably determines that the required security is insecure, deficient in amount, or exhausted in whole or in part, the commissioner by written order shall require the license holder to file or make new or additional security to comply with this section.

(i) Instead of providing all or part of the amount of the security required by this section, an applicant or license holder may deposit, with a financial institution possessing trust powers that is authorized to conduct a trust business in this state and is acceptable to the commissioner, an aggregate amount of United States currency, certificates of deposit, or other cash equivalents that equals the total amount of the required security or the remaining part of the security. The deposit:

(1) must be held in trust in the name of and be pledged to the commissioner;

(2) must secure the same obligations as the security; and

(3) is subject to other conditions and terms the commissioner may reasonably require.

(j) The security is considered by operation of law to be held in trust for the benefit of this state and any individual to whom an obligation arising under this chapter is owed, and may not be considered an asset or property of the license holder in the event of bankruptcy, receivership, or a claim against the license holder unrelated to the license holder's obligations under this chapter.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff.

September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 988 (H.B. 2134), Sec. 11, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 428 (S.B. 1403), Sec. 8, eff. September 1, 2017.

Sec. 151.309. PERMISSIBLE INVESTMENTS. (a) A money transmission license holder must maintain at all times permissible investments that have an aggregate market value computed in accordance with generally accepted accounting principles in an amount not less than:

(1) if the license holder has a net worth of less than $5 million, the aggregate face amount of the license holder's average outstanding money transmission obligations in the United States, computed in the manner prescribed by commission rule; or

(2) if the license holder has a net worth of $5 million or more, 50 percent of the amount required by Subdivision (1).

(b) Except to the extent limited by Subsection (d), the following constitute a permissible investment for purposes of this section:

(1) 40 percent of the receivables due a license holder from authorized delegates resulting from money transmission under this chapter that is not past due or doubtful of collection;

(2) cash in demand or interest-bearing accounts with a federally insured depository institution, including certificates of deposit;

(3) certificates of deposit or senior debt obligations of a domestic federally insured depository institution that are readily marketable and insured by an agency of the federal government;

(4) investment grade bonds and other legally created general obligations of a state, an agency or political subdivision of a state, the United States, or an instrumentality of the United States;

(5) obligations that a state, an agency or political subdivision of a state, the United States, or an instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee and that bear a rating of one of the three highest grades as defined by a nationally recognized organization that rates

securities;

(6) shares in a money market mutual fund if the mutual fund, under the terms of the mutual fund's governing documents, is authorized to invest only in securities of the type described by Subdivisions (4) and (5) or permitted by commission rule; and

(7) other assets and investments permitted by rule of the commission or approved by the commissioner in writing, based on a determination that the assets or investments have a safety substantially equivalent to other permissible investments.

(c) In addition to investments listed in Subsection (b), a permissible investment for purposes of Subsection (a) includes:

(1) the security provided under Section 151.308;

(2) a surety bond or letter of credit in addition to the security provided under Section 151.308, if the additional surety bond or letter of credit satisfies the requirements of Section 151.308; and

(3) that portion of a surety bond maintained for the benefit of the purchasers of the license holder's outstanding money transmission obligations in another state that is not in excess of the amount of the outstanding obligations in that state, provided:

(A) the license holder maintains a surety bond or letter of credit or has on hand other permissible investments, or a combination of investments, in an amount sufficient to satisfy the requirements of Subsection (a) with respect to the outstanding money transmission obligations in this state; and

(B) the surety bond is issued by a surety rated within the top two rating categories of a nationally recognized United States rating service.

(d) The commissioner, with respect to a license holder, may limit or disallow for purposes of determining compliance with Subsection (a) an investment, surety bond, or letter of credit otherwise permitted by this section if the commissioner determines it to be unsatisfactory for investment purposes or to pose a significant supervisory concern.

(e) A permissible investment subject to this section, even if commingled with other assets of the license holder, is considered by operation of law to be held in trust for the benefit of any individual to whom an obligation arising under this chapter is owed, and may not be considered an asset or property of the license holder in the event of bankruptcy, receivership, or a claim against the

license holder unrelated to any of the license holder's obligations under this chapter.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

SUBCHAPTER E. CONDUCT OF MONEY TRANSMISSION BUSINESS

Sec. 151.401. LIABILITY OF LICENSE HOLDER. A money transmission license holder is liable for the payment of all money or monetary value received for transmission directly or by an authorized delegate appointed in accordance with Section 151.402.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 988 (H.B. 2134), Sec. 12, eff. September 1, 2013.

Sec. 151.402. CONDUCT OF BUSINESS THROUGH AUTHORIZED DELEGATE. (a) A money transmission license holder may conduct business regulated under this chapter through an authorized delegate appointed by the license holder in accordance with this section. A license holder is responsible for the acts of the authorized delegate, of which the license holder has or reasonably should have knowledge, that are conducted pursuant to the authority granted by the license holder and that relate to the license holder's money transmission business.

(b) Before a license holder is authorized to conduct business through an authorized delegate or allows a person to act as the license holder's authorized delegate, the license holder must:

(1) adopt, and update as necessary, written policies and procedures designed to ensure that the license holder's authorized delegate complies with applicable state and federal law;

(2) enter into a written contract that complies with Subsection (c); and

(3) conduct a reasonable risk-based background investigation sufficient for the license holder to determine whether the authorized delegate has complied with applicable state and federal law.

(c) The written contract required by Subsection (b)(2) must be signed by the license holder and the authorized delegate and, at a minimum, must:

(1) appoint the person signing the contract as the license holder's authorized delegate with the authority to conduct money transmission on behalf of the license holder;

(2) set forth the nature and scope of the relationship between the license holder and the authorized delegate and the respective rights and responsibilities of the parties;

(3) require the authorized delegate to certify that the delegate is familiar with and agrees to fully comply with all applicable state and federal laws, rules, and regulations pertaining to money transmission, including this chapter and rules adopted under this chapter, relevant provisions of the Bank Secrecy Act and the USA PATRIOT ACT, and Chapter 271;

(4) require the authorized delegate to remit and handle money and monetary value in accordance with Sections 151.403(b) and (c);

(5) impose a trust on money and monetary value received in accordance with Section 151.404;

(6) require the authorized delegate to prepare and maintain records as required by this chapter or a rule adopted under this chapter or as reasonably requested by the commissioner;

(7) acknowledge that the authorized delegate consents to examination or investigation by the commissioner;

(8) state that the license holder is subject to regulation by the commissioner and that, as part of that regulation, the commissioner may suspend or revoke an authorized delegate designation or require the license holder to terminate an authorized delegate designation;

(9) acknowledge receipt of the written policies and procedures required under Subsection (b)(1); and

(10) acknowledge that the authorized delegate has been provided regulatory website addresses through which the authorized delegate can access this chapter and rules adopted under this chapter and the Bank Secrecy Act, the USA PATRIOT ACT, and Chapter 271.

(d) A license holder must report to the commissioner the theft or loss of payment instruments or stored value from the license holder or an authorized delegate in this state if the total value of the instruments or stored value exceeds $10,000. The license holder

must make the report as soon as the license holder has knowledge of the theft or loss.

(e) A license holder must notify the license holder's authorized delegates and require the delegates to take any action required by the commissioner if:

(1) the license holder's license expired or is surrendered or revoked; or

(2) the license holder is subject to an emergency or final order that affects the conduct of the license holder's business through an authorized delegate.

(f) A license holder must maintain a current list of authorized delegates located in this state or doing business with persons located in this state that includes the name and business address of each delegate and must provide the list to the commissioner on request. A license holder that engages in business through 11 or more authorized delegates located in this state must include on the license holder's website a list of the names and addresses of the authorized delegates of the license holder located in this state and the delegates' business addresses. The license holder must update the list quarterly.

(g) The commission by rule may exempt from one or more of the requirements of this chapter an authorized delegate that is a federally insured financial institution excluded under Section 151.003(3) or a foreign bank branch or agency excluded under Section 151.003(4).

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 988 (H.B. 2134), Sec. 13, eff. September 1, 2013.

Sec. 151.403. AUTHORIZED DELEGATE CONDUCT. (a) An authorized delegate of a license holder:

(1) is under a duty to and must act only as authorized under the contract with the license holder and in strict compliance with the license holder's written policies and procedures;

(2) must not commit fraud or misrepresentation or make any fraudulent or false statement or misrepresentation to a license

holder or the commissioner;

(3) must cooperate with an investigation or examination conducted by the commissioner and is considered to have consented to the commissioner's examination of the delegate's books and records;

(4) must not commit an unsafe or unsound act or practice or conduct business in an unsafe and unsound manner;

(5) must, on discovery, immediately report to the license holder the theft or loss of payment instruments or stored value;

(6) must prominently display on the form prescribed by the commissioner a notice that indicates that the person is an authorized delegate of the license holder under this subchapter; and

(7) must cease to provide money services as an authorized delegate of a license holder or take other required action immediately on receipt of notice from the commissioner or the license holder as provided by Section 151.402(e).

(b) An authorized delegate shall remit all money owed to the license holder:

(1) not later than the 10th business day after the date the authorized delegate receives the money;

(2) in accordance with the contract between the license holder and the authorized delegate; or

(3) as directed by the commissioner.

(c) Notwithstanding Subsection (b)(1), an authorized delegate may remit the money at a later date if the authorized delegate maintains on deposit with an office of a federally insured financial institution located in the United States an amount that:

(1) is in an account solely in the name of the license holder; and

(2) for each day by which the period before the remittance exceeds 10 business days, is not less than the outstanding obligations of the license holder routinely incurred by the authorized delegate on a daily basis.

(d) Any business for which a license is required under this subchapter that is conducted by an authorized delegate outside the scope of authority conferred in the contract between the authorized delegate and the license holder is unlicensed activity.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.404. TRUST IMPOSED. (a) A license holder shall hold in trust all money received for transmission directly or from an authorized delegate from the time of receipt until the time the transmission obligation is discharged. A trust resulting from the license holder's actions is in favor of the persons to whom the related money transmission obligations are owed.

(b) A license holder's authorized delegate shall hold in trust all money received for transmission by or for the license holder from the time of receipt until the time the money is remitted by the authorized delegate to the license holder. A trust resulting from the authorized delegate's actions is in favor of the license holder.

(c) A license holder's authorized delegate may not commingle the money received for transmission by or for the license holder with the authorized delegate's own money or other property, except to use in the ordinary course of the delegate's business for the purpose of making change, if the money is accounted for at the end of each business day.

(d) If a license holder or the license holder's authorized delegate commingles any money received for transmission with money or other property owned or controlled by the license holder or delegate, all commingled money and other property are impressed with a trust as provided by this section in an amount equal to the amount of money received for transmission, less the amount of fees paid for the transmission.

(e) If the commissioner revokes a license holder's license under Section 151.703, all money held in trust by the license holder and the license holder's authorized delegates is assigned to the commissioner for the benefit of the persons to whom the related money transmission obligations are owed.

(f) Money of a license holder or authorized delegate impressed with a trust under this section may not be considered an asset or property of the license holder or authorized delegate in the event of bankruptcy, receivership, or a claim against the license holder or authorized delegate unrelated to the license holder's or delegate's obligations under this chapter.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.405. DISCLOSURE REQUIREMENTS. (a) A license holder's name and mailing address or telephone number must be provided to the purchaser in connection with each money transmission transaction conducted by the license holder directly or through an authorized delegate.

(b) A license holder receiving currency or an instrument payable in currency for transmission must comply with Chapter 278.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

SUBCHAPTER F. CURRENCY EXCHANGE LICENSE

Sec. 151.501. DEFINITIONS. (a) This section defines terms that apply specifically to an applicant for or holder of a currency exchange license issued under this subchapter.

(b) In this subchapter:

(1) "Currency" means the coin and paper money of the United States or any country that is designated as legal tender and circulates and is customarily used and accepted as a medium of exchange in the country of issuance.

(2) "Currency exchange" means:

(A) receiving the currency of one government and exchanging it for the currency of another government; or

(B) receiving a negotiable instrument and exchanging it for the currency of another government.

(3) "Negotiable instrument" has the meaning assigned by Section 3.104, Business & Commerce Code.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 988 (H.B. 2134), Sec. 14, eff. September 1, 2013.

Sec. 151.502. LICENSE REQUIRED. (a) A person may not engage in the business of currency exchange or advertise, solicit, or hold itself out as providing currency exchange unless the person:

(1) is licensed under this subchapter;

(2) is licensed for money transmission under Subchapter D;

(3) is an authorized delegate of a person licensed for money transmission under Subchapter D;

(4) is excluded under Section 151.003; or

(5) has been granted an exemption under Subsection (d).

(b) For purposes of this chapter, a person engages in the business of currency exchange if the person exchanges currency and receives compensation or expects to receive compensation, directly or indirectly, for the currency exchange.

(c) A license holder may engage in the currency exchange business at one or more locations in this state owned, directly or indirectly by the license holder, under a single license.

(d) On application and a finding that the exemption is in the public interest, the commissioner may exempt a retailer, wholesaler, or service provider that in the ordinary course of business accepts currency of a foreign country or government as payment for goods or services, provided that a person is not eligible for the exemption if:

(1) the value of the goods or services purchased in a single transaction exceeds $10,000;

(2) the change given or made as a result of the transaction exceeds $100;

(3) an attempt is made to structure a transaction in a manner that evades the licensing requirements of this subchapter or avoids using a business licensed under this chapter;

(4) the person is engaged in the business of cashing checks, drafts, or other payment instruments for consideration and is not otherwise exempt from licensing under this chapter; or

(5) the person would not be eligible for a license under this chapter.

(e) In accordance with the investigation provisions of this chapter, the commissioner may examine a person to verify the person's exempt status under Subsection (d).

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 8, eff. June 19, 2015.

Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 7, eff. May 24, 2019.

Sec. 151.503. QUALIFICATIONS. An applicant for a currency exchange license must have the qualifications set forth in Section 151.202.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.504. APPLICATION AND ACCOMPANYING FEE AND SECURITY. (a) An applicant for a currency exchange license must submit an application in accordance with Section 151.203.

(b) At the time an application for a currency exchange license is submitted, an applicant must file with the department:

(1) an application fee in the amount established by commission rule; and

(2) security in the amount required under Section 151.506.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 75 (S.B. 899), Sec. 3, eff. September 1, 2015.

Sec. 151.505. INVESTIGATION AND ACTION ON APPLICATION. The commissioner shall investigate the applicant and act on the application in accordance with Sections 151.204 and 151.205.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.506. SECURITY. (a) An applicant for a currency exchange license must provide and a currency exchange license holder must maintain at all times security in the amount applicable to the applicant or license holder under this section. The security must satisfy the requirements of and is subject to Sections 151.308(c)-(j).

(b) An applicant must provide and a license holder must

maintain security in the amount of $2,500 if the applicant will conduct or the license holder conducts business with persons located in this state exclusively at one or more physical locations through in-person, contemporaneous transactions.

(c) Except as provided by Subsection (d), if Subsection (b) does not apply to:

(1) the applicant, the applicant must provide security in the amount that is the greater of:

(A) $2,500; or

(B) an amount equal to one percent of the applicant's projected total dollar volume of currency exchange business in this state for the first year of licensure; or

(2) the license holder, the license holder must maintain security in the amount that is the greater of:

(A) $2,500; or

(B) an amount equal to one percent of the license holder's total dollar volume of currency exchange business in this state for the preceding year.

(d) The maximum amount of security that may be required under Subsection (c) is $1 million.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 75 (S.B. 899), Sec. 4, eff. September 1, 2015.

SUBCHAPTER G. EXAMINATIONS, REPORTS, AND RECORDS

Sec. 151.601. EXAMINATIONS. (a) The commissioner may examine a license holder or authorized delegate of a license holder as reasonably necessary or appropriate to administer and enforce this chapter and rules adopted and orders issued under this chapter and other applicable law, including the Bank Secrecy Act, the USA PATRIOT ACT, and Chapter 271.

(b) The commissioner may:

(1) conduct an examination annually or at other times as the commissioner may reasonably require;

(2) conduct an on-site examination or an off-site review of records;

(3) conduct an examination in conjunction with an examination conducted by representatives of other state agencies or agencies of another state or of the federal government;

(4) accept the examination report of another state agency or an agency of another state or of the federal government, or a report prepared by an independent accounting firm, which on being accepted is considered for all purposes as an official report of the commissioner; and

(5) summon and examine under oath a principal, responsible individual, or employee of a license holder or authorized delegate of a license holder and require the person to produce records regarding any matter related to the condition and business of the license holder or authorized delegate.

(c) A license holder or authorized delegate of a license holder shall provide, and the commissioner shall have full and complete access to, all records the commissioner may reasonably require to conduct a complete examination. The records must be provided at the location and in the format specified by the commissioner.

(d) Unless otherwise directed by the commissioner, a license holder shall pay all costs reasonably incurred in connection with an examination of the license holder or the license holder's authorized delegate.

(e) Disclosure of information to the commissioner under an examination request does not waive or otherwise affect or diminish confidentiality or a privilege to which the information is otherwise subject. Information disclosed to the commissioner in connection with an examination is confidential under Section 151.606.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.602. RECORDS. (a) A license holder must prepare, maintain, and preserve the following books, accounts, and other records for at least five years or another period as may be prescribed by rule of the commission:

(1) a record of each money transmission transaction or currency exchange transaction, as applicable;

(2) a general ledger posted in accordance with generally accepted accounting principles containing all asset, liability,

capital, income, and expense accounts, unless directed otherwise by the commissioner;

(3) bank statements and bank reconciliation records;

(4) all records and reports required by applicable state and federal law, including the reporting and recordkeeping requirements imposed by the Bank Secrecy Act, the USA PATRIOT ACT, and Chapter 271, and other federal and state laws pertaining to money laundering, drug trafficking, or terrorist funding; and

(5) any other records required by commission rule or reasonably requested by the commissioner to determine compliance with this chapter.

(b) The records required under this section may be:

(1) maintained in a photographic, electronic, or other similar form; and

(2) maintained at the license holder's principal place of business or another location as may be reasonably requested by the commissioner.

(c) An authorized delegate must prepare, maintain, and preserve the records required by commission rule or reasonably requested by the commissioner.

(d) The records required under this section are subject to inspection by the commissioner under Section 151.601.

(e) The records required under this section and the reports required under Section 151.603 must be in English and the financial information contained in the records and reports must be denominated in United States dollars.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 9, eff. June 19, 2015.

Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 8, eff. May 24, 2019.

Sec. 151.603. REPORTS. (a) An applicant or license holder shall file a written report with the commissioner not later than the 15th day after the date the applicant or license holder knows or has reason to know of a material change in the information reported in an

application or annual report required under Section 151.207(b)(2). The report must describe the change and the anticipated impact of the change on the activities of the applicant or license holder in this state.

(b) A money transmission license holder shall prepare written reports and statements as follows:

(1) the annual report required by Section 151.207(b)(2), including an audited unconsolidated financial statement that is dated as of the last day of the license holder's fiscal year that ended in the immediately preceding calendar year;

(2) a quarterly interim financial statement and report regarding the permissible investments required to be maintained under Section 151.309 that reflect the license holder's financial condition and permissible investments as of the last day of the calendar quarter to which the statement and report relate and that are prepared not later than the 45th day after the last day of the calendar quarter; and

(3) any other report required by rule of the commission or reasonably requested by the commissioner to determine compliance with this chapter.

(c) A currency exchange license holder shall prepare a written report or statement as follows:

(1) the annual report required by Section 151.207(b)(2), including a financial statement that may be audited or unaudited and that is dated as of the last day of the license holder's fiscal year that ended in the immediately preceding calendar year;

(2) a quarterly interim financial statement and transaction report that reflects the license holder's financial condition and currency exchange business as of the last day of the calendar quarter to which the statement and report relate and that are prepared not later than the 45th day after the last day of the calendar quarter; and

(3) any other report required by rule of the commission or reasonably requested by the commissioner to determine compliance with this chapter.

(c-1) Repealed by Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 23, eff. May 24, 2019.

(d) A license holder shall file the statements and reports required under this section with the commissioner as required by this chapter, by commission rule, or as requested by the commissioner.

(e) On written application and for good cause shown, the commissioner may extend the time for preparing or filing a statement or report required under this section.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 988 (H.B. 2134), Sec. 15, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 10, eff. June 19, 2015.
Acts 2019, 86th Leg., R.S., Ch. 198 (H.B. 2458), Sec. 23(2), eff. May 24, 2019.

Sec. 151.604. EXTRAORDINARY REPORTING REQUIREMENTS. (a) A license holder shall file a written report with the commissioner not later than the 15th day after the date the license holder knows or has reason to know of a material change in the information reported in an application or annual report required under Section 151.207(b)(2). The report must describe the change and the anticipated impact of the change on the license holder's activities in this state.

(b) A license holder must file a written report with the commissioner not later than 24 hours after the license holder knows or has reason to know of:

(1) the filing of a petition by or against the license holder for bankruptcy or reorganization;

(2) the filing of a petition by or against the license holder for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of the license holder's creditors;

(3) the institution of a proceeding to revoke or suspend the license holder's license, or to enjoin or otherwise require the license holder to cease and desist from engaging in an activity related to a business activity that, if conducted in this state, would be subject to this chapter, by a state or country in which the license holder engages in business or is licensed;

(4) the felony indictment or conviction of the license

holder or a principal of, person in control of, responsible individual of, or authorized delegate of the license holder for an offense identified in Section 151.202(e);

(5) the cancellation or other impairment of the license holder's security; or

(6) the inability to meet the license holder's transmission obligations under this chapter for a period of 24 hours or longer.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 988 (H.B. 2134), Sec. 16, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1000 (H.B. 483), Sec. 11, eff. June 19, 2015.

Sec. 151.605. CHANGE OF CONTROL. (a) This section applies to a proposed change of control of a license holder that results in a person or group of persons acting in concert, a "proposed person in control," after consummation of the acquisition transaction, controlling the license holder or a person in control of a license holder.

(b) A person may not directly or indirectly acquire control of a license holder or a person in control of a license holder without the prior written approval of the commissioner, except as provided by this section.

(c) A license holder or proposed person in control shall:

(1) give the commissioner written notice of a proposed change of control at least 45 days before the date the proposed transaction is to be consummated;

(2) request approval of the proposed change of control; and

(3) submit a nonrefundable fee in an amount established by commission rule.

(d) A proposed person in control is subject to the same standards and qualifications that apply to a principal of an applicant for a new license under this chapter. The commissioner may require the license holder or proposed person in control to provide the same type of information, documentation, and certifications and may conduct the same type of investigation the commissioner requires

and conducts in connection with a new license application.

(e) The commissioner shall approve a proposed change of control if the commissioner determines that the proposed person in control has the financial responsibility, financial condition, business experience, competence, character, and general fitness to warrant the belief that the business of the license holder will be conducted in compliance with this chapter, rules adopted under this chapter, and other applicable state and federal law and that the change of control will not jeopardize the public interest.

(f) If the commissioner determines that the proposed person in control fails to meet the qualifications, standards, and requirements of this chapter, the commissioner shall inform the license holder and the proposed person in control in writing that the application is denied and state the reasons for the denial. The license holder or the proposed person in control may appeal the denial by filing a written request for a hearing with the commissioner not later than the 30th day after the date the notice is mailed. A hearing on the denial must be held not later than the 45th day after the date the commissioner receives the written request unless the administrative law judge extends the period for good cause or the parties agree to a later hearing date. The hearing is considered a contested case hearing and is subject to Section 151.801.

(g) The following persons are exempt from the requirements of Subsection (a), but the license holder must notify the commissioner not later than the 15th day after the date the change of control becomes effective:

(1) a person that acts as proxy for the sole purpose of voting at a designated meeting of the security holders or holders of voting interests of a license holder or controlling person;

(2) a person that acquires control of a license holder by devise or descent;

(3) a person exempted in the public interest by rule of the commission or by order of the commissioner; and

(4) a person that has previously complied with and received approval under this chapter or that was identified as a person in control in a prior application filed with and approved by the commissioner.

(h) Subsection (b) does not apply to a public offering of securities.

(i) Before filing an application for approval of a proposed

change of control, a license holder may submit a written request asking the commissioner to determine whether a person would be considered a proposed person in control of the license holder and whether the requirements of this section apply to the proposed transaction. The request must be accompanied by a fee in an amount established by commission rule and must correctly and fully represent the facts relevant to the person and the proposed transaction. If the commissioner determines that the person would not be a person in control of the license holder for purposes of this section, the commissioner shall advise the license holder in writing that this section does not apply to the proposed person and transaction.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 75 (S.B. 899), Sec. 5, eff. September 1, 2015.

Sec. 151.606. CONFIDENTIALITY. (a) Except as otherwise provided by Subsection (b) or by rule of the commission, all financial information and all other personal information obtained by the commissioner under this chapter through application, examination, investigation, or otherwise, and any related file or record of the department, is confidential and not subject to disclosure.

(b) The commissioner may disclose confidential information if:

(1) the applicant, license holder, or authorized delegate consents to the release of the information or has published the information contained in the release;

(2) the commissioner finds that release of the information is necessary to protect the public or purchasers or potential purchasers of money services from the license holder or authorized delegate from immediate and irreparable harm;

(3) the information is disclosed to an agency identified in Section 151.105(a), in which event the information remains confidential and the agency must take appropriate measures to maintain that confidentiality;

(4) the commissioner finds that release of the information is required for an administrative hearing; or

(5) the commissioner discloses the information to a person

acting on behalf of or for the commissioner for regulatory or enforcement purposes, subject to an agreement that maintains the confidentiality of the information.

(c) This section does not prohibit the commissioner from disclosing to the public:

(1) a list of license holders or authorized delegates, including addresses and the names of contact individuals;

(2) the identity of a license holder or authorized delegate subject to an emergency or final order of the commissioner and the basis for the commissioner's action; or

(3) information regarding or included in a consumer complaint against a license holder or authorized delegate.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

SUBCHAPTER H. ENFORCEMENT

Sec. 151.701. INJUNCTIVE RELIEF. (a) Whenever it appears that a person has violated, or that reasonable cause exists to believe that a person is likely to violate, this chapter or a rule adopted under this chapter, the following persons may bring an action for injunctive relief to enjoin the violation or enforce compliance with the provision:

(1) the commissioner, through the attorney general;

(2) the attorney general;

(3) the district attorney of Travis County; or

(4) the prosecuting attorney of the county in which the violation is alleged to have occurred.

(b) In addition to the authority granted to the commissioner under Subsection (a), the commissioner, through the attorney general, may bring an action for injunctive relief if the commissioner has reason to believe that a person has violated or is likely to violate an order of the commissioner issued under this chapter.

(c) An action for injunctive relief brought by the commissioner, the attorney general, or the district attorney of Travis County under Subsection (a), or brought by the commissioner under Subsection (b), must be brought in a district court in Travis County. An action brought by a prosecuting attorney under Subsection (a)(4) must be brought in a district court in the county in which all

or part of the violation is alleged to have occurred.

(d) On a proper showing, the court may issue a restraining order, an order freezing assets, a preliminary or permanent injunction, or a writ of mandate, or may appoint a receiver for the defendant or the defendant's assets.

(e) A receiver appointed by the court under Subsection (d) may, with approval of the court, exercise all of the powers of the defendant's directors, officers, partners, trustees, or persons who exercise similar powers and perform similar duties.

(f) An action brought under this section may include a claim for ancillary relief, including a claim by the commissioner for costs or civil penalties authorized under this chapter, or for restitution or damages on behalf of the persons injured by the act constituting the subject matter of the action, and the court has jurisdiction to award that relief.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.702. CEASE AND DESIST ORDERS FOR UNLICENSED PERSONS. (a) If the commissioner has reason to believe that an unlicensed person has engaged or is likely to engage in an activity for which a license is required under this chapter, the commissioner may order the person to cease and desist from the violation until the person is issued a license under this chapter. The commissioner's order is subject to Section 151.709, unless the order is issued as an emergency order. The commissioner may issue an emergency cease and desist order in accordance with Section 151.710 if the commissioner finds that the person's violation or likely violation threatens immediate and irreparable harm to the public.

(b) A cease and desist order under this section may require the unlicensed person to take affirmative action to correct any condition resulting from or contributing to the activity or violation, including the payment of restitution to each resident of this state damaged by the violation.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 428 (S.B. 1403), Sec. 9, eff.

September 1, 2017.

Sec. 151.703. SUSPENSION AND REVOCATION OF LICENSE. (a) The commissioner must revoke a license if the commissioner finds that:

(1) the net worth of the license holder is less than the amount required under this chapter; or

(2) the license holder does not provide the security required under this chapter.

(b) The commissioner may suspend or revoke a license or order a license holder to revoke the designation of an authorized delegate if the commissioner has reason to believe that:

(1) the license holder has violated this chapter, a rule adopted or order issued under this chapter, a written agreement entered into with the department or commissioner, or any other state or federal law applicable to the license holder's money services business;

(2) the license holder has refused to permit or has not cooperated with an examination or investigation authorized by this chapter;

(3) the license holder has engaged in fraud, knowing misrepresentation, deceit, or gross negligence in connection with the operation of the license holder's money services business or any transaction subject to this chapter;

(4) an authorized delegate of the license holder has knowingly violated this chapter, a rule adopted or order issued under this chapter, or a state or federal anti-money-laundering or terrorist funding law, and the license holder knows or should have known of the violation and has failed to make a reasonable effort to prevent or correct the violation;

(5) the competence, experience, character, or general fitness of the license holder or an authorized delegate of the license holder, or a principal of, person in control of, or responsible person of a license holder or authorized delegate, indicates that it is not in the public interest to permit the license holder or authorized delegate to provide money services;

(6) the license holder has engaged in an unsafe or unsound act or practice or has conducted business in an unsafe or unsound manner;

(7) the license holder has suspended payment of the license

holder's obligations, made a general assignment for the benefit of the license holder's creditors, or admitted in writing the license holder's inability to pay debts of the license holder as they become due;

(8) the license holder has failed to terminate the authority of an authorized delegate after the commissioner has issued and served on the license holder a final order finding that the authorized delegate has violated this chapter;

(9) a fact or condition exists that, if it had been known at the time the license holder applied for the license, would have been grounds for denying the application;

(10) the license holder has engaged in false, misleading, or deceptive advertising;

(11) the license holder has failed to pay a judgment entered in favor of a claimant or creditor in an action arising out of the license holder's activities under this chapter not later than the 30th day after the date the judgment becomes final or not later than the 30th day after the date the stay of execution expires or is terminated, as applicable;

(12) the license holder has knowingly made a material misstatement or has suppressed or withheld material information on an application, request for approval, report, or other document required to be filed with the department under this chapter; or

(13) the license holder has committed a breach of trust or of a fiduciary duty.

(c) In determining whether a license holder has engaged in an unsafe or unsound act or practice or has conducted business in an unsafe or unsound manner, the commissioner may consider factors that include:

(1) the size and condition of the license holder's provision of money services;

(2) the magnitude of the loss or potential loss;

(3) the gravity of the violation of this chapter or rule adopted or order issued under this chapter;

(4) any action taken against the license holder by this state, another state, or the federal government; and

(5) the previous conduct of the license holder.

(d) The commissioner's order suspending or revoking a license or directing a license holder to revoke the designation of an authorized delegate is subject to Section 151.709, unless the order

is issued as an emergency order. The commissioner may issue an emergency order suspending a license or directing a license holder to revoke the designation of an authorized delegate in accordance with Section 151.710 if the commissioner finds that the factors identified in Section 151.710(b) exist.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.704. SUSPENSION AND REVOCATION OF AUTHORIZED DELEGATE DESIGNATION. (a) The commissioner may suspend or revoke the designation of an authorized delegate if the commissioner has reason to believe that:

(1) the authorized delegate has violated this chapter, a rule adopted or order issued under this chapter, a written agreement entered into with the commissioner or the department, or any other state or federal law applicable to a money services business;

(2) the authorized delegate has refused to permit or has not cooperated with an examination or investigation under this chapter;

(3) the authorized delegate has engaged in fraud, knowing misrepresentation, deceit, gross negligence, or an unfair or deceptive act or practice in connection with the operation of the delegate's business on behalf of the license holder or any transaction subject to this chapter;

(4) the competence, experience, character, or general fitness of the authorized delegate, or a principal of, person in control of, or responsible person of the authorized delegate, indicates that it is not in the public interest to permit the authorized delegate to provide money services;

(5) the authorized delegate has engaged in an unsafe or unsound act or practice or conducted business in an unsafe and unsound manner;

(6) the authorized delegate, or a principal or responsible person of the authorized delegate, is listed on the specifically designated nationals and blocked persons list prepared by the United States Department of the Treasury as a potential threat to commit terrorist acts or to fund terrorist acts; or

(7) the authorized delegate, or a principal or responsible

person of the authorized delegate, has been convicted of a state or federal anti-money-laundering or terrorist funding law.

(b) In determining whether an authorized delegate has engaged in an unsafe or unsound act or practice or conducted business in an unsafe or unsound manner, the commissioner may consider factors that include:

(1) the size and condition of the authorized delegate's provision of money services;

(2) the magnitude of the loss or potential loss;

(3) the gravity of the violation of this chapter or rule adopted or order issued under this chapter;

(4) any action taken against the authorized delegate by this state, another state, or the federal government; and

(5) the previous conduct of the authorized delegate.

(c) The commissioner's order suspending or revoking the designation of an authorized delegate is subject to Section 151.709, unless the order is issued as an emergency order. The commissioner may issue an emergency order suspending the designation of an authorized delegate in accordance with Section 151.710 if the commissioner finds that the factors identified in Section 151.710(b) exist.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.705. CEASE AND DESIST ORDERS FOR LICENSE HOLDERS OR AUTHORIZED DELEGATES. (a) The commissioner may issue an order to cease and desist if the commissioner finds that:

(1) an action, violation, or condition listed in Section 151.703 or 151.704 exists with respect to a license holder or authorized delegate; and

(2) a cease and desist order is necessary to protect the interests of the license holder, the purchasers of the license holder's money services, or the public.

(b) A cease and desist order may require a license holder or authorized delegate to cease and desist from the action or violation or to take affirmative action to correct any condition resulting from or contributing to the action or violation, and the requirements of the order may apply to a principal or responsible person of the

license holder or authorized delegate.

(c) The cease and desist order is subject to Section 151.709, unless the order is issued as an emergency order. The commissioner may issue an emergency cease and desist order in accordance with Section 151.710 if the commissioner finds that the factors identified in Section 151.710(b) exist.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 428 (S.B. 1403), Sec. 10, eff. September 1, 2017.

Sec. 151.706. CONSENT ORDERS. (a) The commissioner may enter into a consent order at any time with a person to resolve a matter arising under this chapter or a rule adopted or order issued under this chapter.

(b) A consent order must be signed by the person to whom the order is issued or by the person's authorized representative and must indicate agreement with the terms contained in the order. However, a consent order may provide that the order does not constitute an admission by a person that this chapter or a rule adopted or order issued under this chapter has been violated.

(c) A consent order is a final order and may not be appealed.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.707. ADMINISTRATIVE PENALTY. (a) After notice and hearing, the commissioner may assess an administrative penalty against a person that:

(1) has violated this chapter or a rule adopted or order issued under this chapter and has failed to correct the violation not later than the 30th day after the date the department sends written notice of the violation to the person;

(2) if the person is a license holder, has engaged in conduct specified in Section 151.703;

(3) has engaged in a pattern of violations; or

(4) has demonstrated wilful disregard for the requirements

of this chapter, the rules adopted under this chapter, or an order issued under this chapter.

(b) A violation corrected after a person receives written notice from the department of the violation may be considered for purposes of determining whether a person has engaged in a pattern of violations under Subsection (a)(3) or demonstrated wilful disregard under Subsection (a)(4).

(c) The amount of the penalty may not exceed $5,000 for each violation or, in the case of a continuing violation, $5,000 for each day that the violation continues. Each transaction in violation of this chapter and each day that a violation continues is a separate violation.

(d) In determining the amount of the penalty, the commissioner shall consider factors that include the seriousness of the violation, the person's compliance history, and the person's good faith in attempting to comply with this chapter, provided that if the person is found to have demonstrated wilful disregard under Subsection (a)(4), the trier of fact may recommend that the commissioner impose the maximum administrative penalty permitted under Subsection (c).

(e) A hearing to assess an administrative penalty is considered a contested case hearing and is subject to Section 151.801.

(f) An order imposing an administrative penalty after notice and hearing becomes effective and is final for purposes of collection and appeal immediately on issuance.

(g) The commissioner may collect an administrative penalty assessed under this section:

(1) in the same manner that a money judgment is enforced in court; or

(2) if the penalty is imposed against a license holder or a license holder's authorized delegate, from the proceeds of the license holder's security in accordance with Section 151.308(e).

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 428 (S.B. 1403), Sec. 11, eff. September 1, 2017.

Sec. 151.708. CRIMINAL PENALTY. (a) A person commits an

offense if the person:

(1) intentionally makes a false statement, misrepresentation, or certification in a record or application filed with the department or required to be maintained under this chapter or a rule adopted or order issued under this chapter, or intentionally makes a false entry or omits a material entry in the record or application; or

(2) knowingly engages in an activity for which a license is required under Subchapter D or F without being licensed under this chapter.

(b) An offense under this section is a felony of the third degree.

(c) An offense under this section may be prosecuted in Travis County or in the county in which the offense is alleged to have been committed.

(d) Nothing in this section limits the power of the state to punish a person for an act that constitutes an offense under this or any other law.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 75 (S.B. 899), Sec. 6, eff. September 1, 2015.

Sec. 151.709. NOTICE, HEARING, AND OTHER PROCEDURES FOR NONEMERGENCY ORDERS. (a) This section applies to an order issued by the commissioner under this subchapter that is not an emergency order.

(b) An order to which this section applies becomes effective only after notice and an opportunity for hearing. The order must:

(1) state the grounds on which the order is based;

(2) to the extent applicable, state the action or violation from which the person subject to the order must cease and desist or the affirmative action the person must take to correct a condition resulting from the violation or that is otherwise appropriate;

(3) be delivered by personal delivery or sent by certified mail, return receipt requested, to the person against whom the order is directed at the person's last known address;

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

(5) include a notice that a person may file a written request for a hearing on the order with the commissioner not later than the 20th day after the date the order is delivered or mailed.

(c) Unless the commissioner receives a written request for hearing from the person against whom the order is directed not later than the 20th day after the date the order is delivered or mailed, the order takes effect as stated in the order and is final against and nonappealable by that person from that date.

(d) A hearing on the order must be held not later than the 45th day after the date the commissioner receives the written request for the hearing unless the administrative law judge extends the period for good cause or the parties agree to a later hearing date.

(e) An order that has been affirmed or modified after a hearing becomes effective and is final for purposes of enforcement and appeal immediately on issuance. The order may be appealed to the district court of Travis County as provided by Section 151.801(b).

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

Sec. 151.710. REQUIREMENTS AND NOTICE AND HEARING PROCEDURES FOR EMERGENCY ORDERS. (a) This section applies to an emergency order issued by the commissioner under this subchapter.

(b) The commissioner may issue an emergency order, without prior notice and an opportunity for hearing, if the commissioner finds that:

(1) the action, violation, or condition that is the basis for the order:

(A) has caused or is likely to cause the insolvency of the license holder;

(B) has caused or is likely to cause the substantial dissipation of the license holder's assets or earnings;

(C) has seriously weakened or is likely to seriously weaken the condition of the license holder; or

(D) has seriously prejudiced or is likely to seriously prejudice the interests of the license holder, a purchaser of the

license holder's money services, or the public; and

(2) immediate action is necessary to protect the interests of the license holder, a purchaser of the license holder's money services, or the public.

(c) In connection with and as directed by an emergency order, the commissioner may seize the records and assets of a license holder or authorized delegate that relate to the license holder's money services business.

(d) An emergency order must:

(1) state the grounds on which the order is based;

(2) advise the person against whom the order is directed that the order takes effect immediately, and, to the extent applicable, require the person to immediately cease and desist from the conduct or violation that is the subject of the order or to take the affirmative action stated in the order as necessary to correct a condition resulting from the conduct or violation or as otherwise appropriate;

(3) be delivered by personal delivery or sent by certified mail, return receipt requested, to the person against whom the order is directed at the person's last known address; and

(4) include a notice that a person may request a hearing on the order by filing a written request for hearing with the commissioner not later than the 15th day after the date the order is delivered or mailed.

(e) An emergency order takes effect as soon as the person against whom the order is directed has actual or constructive knowledge of the issuance of the order.

(f) A license holder or authorized delegate against whom an emergency order is directed must submit a written certification to the commissioner, signed by the license holder or authorized delegate, and their principals and responsible individuals, as applicable, and each person named in the order, stating that each person has received a copy of and has read and understands the order.

(g) Unless the commissioner receives a written request for a hearing from a person against whom an emergency order is directed not later than the 15th day after the date the order is delivered or mailed, the order is final and nonappealable as to that person on the 16th day after the date the order is delivered or mailed.

(h) A request for a hearing does not stay an emergency order.

(i) A hearing on an emergency order takes precedence over any

other matter pending before the commissioner, and must be held not later than the 10th day after the date the commissioner receives the written request for hearing unless the administrative law judge extends the period for good cause or the parties agree to a later hearing date.

(j) An emergency order that has been affirmed or modified after a hearing is final for purposes of enforcement and appeal. The order may be appealed to the district court of Travis County as provided in Section 151.801(b).

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

SUBCHAPTER I. ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

Sec. 151.801. ADMINISTRATIVE PROCEDURES. (a) All administrative proceedings under this chapter must be conducted in accordance with Chapter 2001, Government Code, and Title 7, Chapter 9, Texas Administrative Code.

(b) A person affected by a final order of the commissioner issued under this chapter after a hearing may appeal the order by filing a petition for judicial review in a district court of Travis County. A petition for judicial review filed in the district court under this subsection does not stay or vacate the appealed order unless the court, after notice and hearing, specifically stays or vacates the order.

Added by Acts 2005, 79th Leg., Ch. 1099 (H.B. 2218), Sec. 1, eff. September 1, 2005.

CHAPTER 154. PREPAID FUNERAL SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 154.001. PURPOSE. The purposes of this chapter are to:

(1) limit the manner in which a person may accept funds in prepayment of funeral services to be performed in the future;

(2) provide a regulatory framework to give the public an opportunity to arrange and pay for funerals in advance of need; and

(3) provide all safeguards to protect the prepaid funds and to assure that the funds will be available to pay for prearranged funeral services.

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

Sec. 154.002. DEFINITIONS. In this chapter:

(1) "Cash advance item" has the meaning assigned by 16 C.F.R. Section 453.1.

(1-a) "Commission" means the Finance Commission of Texas.

(2) "Commissioner" means the banking commissioner of Texas.

(3) "Department" means the Texas Department of Banking.

(4) "Earnings" means the amount in an account in excess of the amount paid by the purchaser of a prepaid funeral benefits contract that is deposited in the account as provided by Section 154.253, including accrued interest, accrued income, and enhanced or increased value.

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

(6) "Funeral provider" means the person designated in a prepaid funeral benefits contract that has agreed to provide the specified prepaid funeral benefits.

(6-a) "Insurance-funded contract" means an insurance-funded prepaid funeral benefits contract.

(7) "Insurance policy" means a life insurance policy or annuity contract.

(8) "Person" means an individual, firm, partnership, corporation, or association.

(9) "Prepaid funeral benefits" means prearranged or prepaid funeral or cemetery services or funeral merchandise, including an alternative container, casket, or outer burial container. The term does not include a grave, marker, monument, tombstone, crypt, niche, plot, or lawn crypt unless it is sold in contemplation of trade for a funeral service or funeral merchandise to which this chapter applies.

(10) "Seller" means a person selling, accepting money or premiums for, or soliciting contracts for prepaid funeral benefits or contracts or insurance policies to fund prepaid funeral benefits in this state.

(11) "Crypt," "grave," "lawn crypt," "niche," and "plot" have the meanings assigned by Section 711.001, Health and Safety Code.

(12) "Funeral merchandise" or "merchandise" means goods sold or offered for sale on a preneed basis directly to the public

for use in connection with funeral services.

(13) "Funeral service" or "service" means a service sold or offered for sale on a preneed basis that may be used to:

(A) care for and prepare a deceased human body for burial, cremation, or other final disposition; and

(B) arrange, supervise, or conduct a funeral ceremony or the final disposition of a deceased human body.

(14) "Trust-funded contract" means a trust-funded prepaid funeral benefits contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.40(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 344, Sec. 2.023, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 867, Sec. 72, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 1, eff. September 1, 2009.

Sec. 154.003. EFFECT ON INSURANCE LAWS. Except as provided by Section 154.004, this chapter does not affect the Insurance Code.

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

Sec. 154.004. GROUP INSURANCE CONTRACTS. (a) A life insurance company authorized to engage in the business of life insurance in this state may issue a group contract of decreasing term life insurance to persons who purchase prepaid funeral benefits from the same seller. The amount of life insurance for a purchaser must at all times approximate the future unpaid balance of the purchaser's contract for prepaid funeral benefits.

(b) A seller has an insurable interest in the life of the purchaser of a prepaid funeral benefits contract to the extent of any unpaid balance of the contract. The proceeds of a life insurance policy received by the seller on the life of the purchaser shall be applied to the unpaid balance.

(c) This section does not affect the funding of prepaid funeral benefits by other insurance contracts as provided by Subchapter E.

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

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

Sec. 154.051. ADMINISTRATION OF CHAPTER; FEES. (a) The department shall administer this chapter.

(b) The commission may adopt reasonable rules concerning:

(1) fees to defray the cost of administering this chapter;

(2) the keeping and inspection of records relating to the sale of prepaid funeral benefits;

(3) the filing of contracts and reports;

(4) changes in the management or control of an organization; and

(5) any other matter relating to the enforcement and administration of this chapter.

(c) The department may not maintain unnecessary fund balances. Fee amounts must be set in accordance with this requirement.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 73, eff. Sept. 1, 2001.

Sec. 154.052. ANNUAL REPORT. (a) The department may require a permit holder that has outstanding contracts for prepaid funeral benefits to submit an annual report in the form required by rule of the commission.

(b) The department shall require a seller that discontinues the sale of prepaid funeral benefits but has outstanding contracts to submit an annual report until the contracts are fully discharged.

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

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 2, eff. June 1, 2010.

Sec. 154.053. RECORDS; EXAMINATION. (a) A permit holder that has outstanding contracts for prepaid funeral benefits shall maintain records as required by rule of the commission.

(b) The department shall examine the records of each permit holder at least once every 18-month period, except that the department may examine a permit holder more frequently if:

(1) the permit holder:

(A) has received a uniform risk rating, under standards adopted by rule of the commission, that is less than satisfactory as a result of the permit holder's most recent examination; or

(B) is subject to a formal enforcement proceeding or order by the commissioner; or

(2) the commissioner determines in the exercise of discretion that additional examination is necessary to safeguard the interests of purchasers and beneficiaries and to efficiently enforce applicable law.

(c) The department may defer an examination under this section for not more than six months if the commissioner determines that deferment of the examination is necessary for the efficient enforcement of applicable law.

(d) Any record may be maintained and provided for examination in electronic format if the record is reliable and can be retrieved in a timely manner.

(e) The department, in consultation with the advisory committee established under Section 154.208, shall develop an examination manual that includes procedures intended to reduce the expense of examinations under this section to the department and the permit holders.

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

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 3, eff. June 1, 2010.

Sec. 154.054. EXAMINATION FEE. (a) For each examination conducted under Section 154.053, the commissioner or the commissioner's agent shall impose on the seller a fee in an amount set by the commission under Section 154.051 and based on the seller's total outstanding contracts.

(b) The amount of the fee must be sufficient to cover:

(1) the cost of the examination, including:

(A) salary and travel expenses for department employees, including travel to and from the place where the records are kept; and

(B) any other expense necessarily incurred in

conducting the examination;

(2) the equitable or proportionate cost of maintaining and operating the department; and

(3) the cost of enforcing this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 74, eff. Sept. 1, 2001.

Sec. 154.055. DISCLOSURE OF CERTAIN INFORMATION; CONFIDENTIALITY. (a) Information relating to the financial condition of a seller obtained by the department directly or indirectly, through examination or otherwise, other than published statements, is confidential.

(b) The files and records of the department relating to the financial condition of a seller are confidential.

(c) The commissioner may disclose the information described by Subsection (a) or (b) to an agency, department, or instrumentality of this or another state or the United States if the commissioner considers disclosure to be in the best interest of the public and necessary or proper to enforce the laws of this or another state or the United States.

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

Sec. 154.056. PAYMENT OF RESTITUTION MONEY. The department shall pay money received under a restitution order to the injured party as ordered.

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

SUBCHAPTER C. PERMITS

Sec. 154.101. PERMIT REQUIREMENT. A person must hold a permit issued under this subchapter to:

(1) sell prepaid funeral benefits, or accept money for prepaid funeral benefits, in this state under any contract; or

(2) solicit an individual's designation of prepaid funeral benefits to be provided out of a fund, investment, security, or contract, including a contract or policy of insurance authorized, and

sold under a license issued, by the Texas Department of Insurance, to be created or purchased by that individual at the suggestion or solicitation of the seller.

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

Sec. 154.102. PERMIT APPLICATION; FEE. To obtain a permit to sell or continue to sell prepaid funeral benefits, a person must:

(1) be one of the following, if the person proposes to offer and sell prepaid funeral benefits contracts subject to Subchapter E:

(A) a funeral provider;

(B) an insurance company; or

(C) the insurance holding company for an insurance company if the insurance company does not have the authority under its domiciliary law to directly hold a permit issued under this chapter;

(2) be a funeral provider, if the person proposes to offer and sell prepaid funeral benefits contracts subject to Subchapter F;

(3) file an application for a permit with the department on a form prescribed by the department;

(4) pay a filing fee in an amount set by the commission under Section 154.051; and

(5) if applicable, pay extraordinary expenses required for out-of-state investigation of the person.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 75, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 4, eff. September 1, 2009.

Sec. 154.103. ISSUANCE OF PERMIT. (a) The commissioner may investigate an applicant before issuing an initial permit.

(b) The commissioner shall approve the application and issue a permit to the applicant if the commissioner finds that the business ability, experience, character, financial condition, and general fitness of the applicant warrant the public's confidence. The commissioner shall notify the applicant if the commissioner finds

otherwise.

(c) The applicant on request is entitled to a hearing on the denial of the application, to be held not later than the 60th day after the date of the request.

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

Sec. 154.104. TERM OF PERMIT. (a) The commission by rule shall prescribe the term of a permit issued under this subchapter.

(b) If the commission prescribes the term of a permit issued under this subchapter for a period other than one year, the commission shall prorate the fee required under this subchapter as necessary to reflect the term of the permit.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 76, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 19, eff. September 1, 2019.

Sec. 154.105. PROHIBITION ON TRANSFER OF PERMIT. A permit is not transferable.

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

Sec. 154.106. TRANSFER OF BUSINESS OWNERSHIP. (a) A permit holder shall notify the department and either the depository of the money held under Subchapter F or the issuer of insurance policy funding contracts under Subchapter E of a transfer of ownership of the permit holder's business or a transfer of 25 percent or more of the stock or other ownership or membership interest of the business in a single transaction. The notice must be given:

(1) in the case of a voluntary transfer, not later than the seventh day after the date the contract for transfer is executed; or

(2) in the case of an involuntary transfer, not later than the first business day after the date the permit holder receives notice of the impending foreclosure or other involuntary transfer.

(b) If the proposed transferee will own 51 percent or more of

the business and is not a permit holder, the proposed transferee shall file an application for a permit with the department in accordance with this subchapter. If the application is complete, the commissioner shall approve or deny the application before the 16th day after the date the application was received. The transfer of prepaid funeral benefits contracts of the permit holder that is the transferor may not occur until after the date a permit is issued to the applicant that is the transferee.

(c) If the commissioner denies the application, the applicant may request a hearing not later than the 15th day after the date on which notice of the determination is hand-delivered or the notice is mailed, whichever date is earlier.

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

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 39, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 1, eff. September 1, 2013.

Sec. 154.107. REQUIRED RENEWAL FOR SELLERS. (a) A seller that has outstanding contracts shall renew the seller's permit until the contracts are fully discharged.

(b) A seller may renew the seller's permit as an unrestricted permit if the seller:

(1) wishes to continue to sell prepaid funeral benefits; and

(2) demonstrates to the commissioner that the seller continues to meet the qualifications and satisfy the requirements that apply to an applicant for a permit.

(c) A seller must renew the seller's permit as a restricted permit if the seller:

(1) cannot demonstrate to the commissioner that the seller continues to meet the qualifications and satisfy the requirements that apply to an applicant for a permit; or

(2) no longer wishes to sell prepaid funeral benefits.

(d) A seller that holds a restricted permit may not sell

prepaid funeral benefits during the period a restricted permit is in effect. A contract entered into by a seller that at the time the contract is entered into holds a restricted permit is void and unenforceable and is not eligible for payment from a guaranty fund established under this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 2, eff. September 1, 2013.

Sec. 154.108. RENEWAL FEE. The commission shall set the renewal fee under Section 154.051.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 77, eff. Sept. 1, 2001.

Sec. 154.109. GROUNDS FOR CANCELLATION OR SUSPENSION OF OR REFUSAL TO RENEW PERMIT. (a) The commissioner by order may cancel or suspend a permit if the commissioner finds, by examination or other credible evidence, that the permit holder:

(1) violated this chapter or another law of this state relating to the sale of prepaid funeral benefits, including a final order of the commissioner or rule of the commission;

(2) misrepresented or concealed a material fact in the permit application; or

(3) obtained, or attempted to obtain, the permit by misrepresentation, concealment, or fraud.

(b) The commissioner by order may refuse to renew a permit if the commissioner finds, by examination or other credible evidence, that the permit holder does not possess a qualification required by Section 154.103(b) for issuance of an initial permit, or that the permit holder:

(1) committed one or more of the acts described by Subsection (a); and

(2) did not correct the violation before the 31st day after the date of written notice from the commissioner.

(c) The commissioner may cancel the permit of a seller that fails to provide to the department evidence of payment of insurance

premiums required by the department under Section 154.203 after the department by written notice requests the evidence.

(d) The commissioner may place on probation a permit holder whose permit is suspended. If a permit suspension is probated, the commissioner may require the permit holder:

(1) to report regularly to the department on matters that are the basis of the probation; or

(2) to limit its activities as prescribed by the commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 78, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 699, Sec. 5, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 6, eff. September 1, 2009.

Sec. 154.110. ORDER TO CANCEL, SUSPEND, OR REFUSE TO RENEW PERMIT. (a) An order issued under Section 154.109 must state:

(1) with reasonable certainty the grounds for the order; and

(2) the effective date, which may not be before the 16th day after the date the order is mailed.

(b) The order shall be served on the person named in the order by certified mail, return receipt requested, to the last known address of the person.

(c) The order takes effect as proposed unless the person named in the order requests a hearing not later than the 15th day after the date the order is mailed.

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

Sec. 154.111. SUCCESSOR PERMIT HOLDER. (a) The commission shall adopt rules governing the selection of a successor permit holder.

(b) A successor permit holder to whom the commissioner transfers a contract under Section 154.413 shall perform the contract and is entitled to retain the money that would have been due the person whose permit was canceled, including any money seized by the

commissioner.

(c) Any premium received through the selection process that exceeds the claims against the prior permit holder shall be deposited in the fund maintained under Section 154.351.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 79, eff. Sept. 1, 2001.

SUBCHAPTER C-1. PRESALE DISCLOSURES

Sec. 154.131. BROCHURE. (a) A seller, directly or through the seller's designated agent, shall provide an informational brochure to each potential purchaser of a prepaid funeral benefits contract.

(b) The brochure must:

(1) describe the regulation of prepaid funeral benefits contracts and the trust and insurance funding options available under the law of this state; and

(2) include a reference to the Internet website required under Section 154.132.

(c) The department:

(1) must approve an informational brochure before the brochure may be used by the seller; and

(2) shall develop a model informational brochure that complies with this section with input from consumers, permit holders, insurers, and funeral providers.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 7, eff. June 1, 2010.

Sec. 154.132. WEBSITE. (a) The department shall establish and maintain an Internet website that provides information to enable consumers to make informed decisions relating to the purchase of prepaid funeral benefits.

(b) The website:

(1) must include a description of the trust and insurance funding options available under the law of this state to be developed with input from consumers, permit holders, insurers, and funeral providers;

(2) may include links to and be linked from the department's website, the Texas Department of Insurance website, and

the Texas Funeral Service Commission website; and

(3) may include additional information or links to additional information that the department determines may be helpful to consumers of prepaid funeral benefits in this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 7, eff. June 1, 2010.

Sec. 154.133. REFERENCE OR LINK TO WEBSITE. Any sales literature or a website that offers or promotes the sale of prepaid funeral benefits contracts to the public must include a reference or link to the Internet website required under Section 154.132.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 7, eff. June 1, 2010.

SUBCHAPTER D. GENERAL PROVISIONS FOR SALES CONTRACTS

Sec. 154.151. FORM OF CONTRACT. (a) The department must approve a sales contract form for prepaid funeral benefits before the form is used.

(b) A sales contract for prepaid funeral benefits must:

(1) be in writing;

(2) state the name of the funeral provider or other person primarily responsible for providing the prepaid funeral benefits specified in the contract; and

(3) state the details of the prepaid funeral benefits to be provided, including a description and specifications of the material used in the caskets or grave vaults to be furnished.

(c) If a funeral provider designated in the contract to provide prepaid funeral benefits is not the seller licensed under this chapter, the funeral provider must:

(1) be a party to the contract;

(2) agree in the contract to provide those benefits; and

(3) by signing the contract, agree to discharge the responsibilities imposed on a funeral provider by Section 154.161.

(d) A sales contract for prepaid funeral benefits, whether in English or Spanish, must be written in plain language designed to be easily understood by the average consumer. The contract must be printed in an easily readable font and type size. The department

shall provide model contracts complying with this subsection and shall enforce this subsection.

(e) The commission by rule shall establish a standard disclosure that must be included in each contract to inform purchasers of the goods and services that will be provided or excluded under the contract and the circumstances under which the contract may be modified after death of the beneficiary. The commission by rule may prescribe a form for the standard disclosure that is designed to more closely conform to variations in sales contract forms that serve different purposes.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 699, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 8, eff. September 1, 2009.

Sec. 154.1511. CASH ADVANCE ITEMS: NON-GUARANTEED MERCHANDISE AND SERVICES. (a) A purchaser of a prepaid funeral benefits contract may agree to advance funds for all or any portion of the estimated cost of cash advance items included in a prepaid funeral benefits contract, the actual cost of which are to be determined by existing prices at the time the items are delivered or provided in connection with at-need performance of the contracted funeral.

(b) Cash advance items included in a prepaid funeral benefits contract must be clearly grouped together and segregated from prepaid funeral benefits in a manner that will permit the average consumer to easily understand that:

(1) cash advance items are not fixed or guaranteed in price; and

(2) additional money may be required to fully pay for those items at the time of the funeral.

(c) A seller shall administer purchaser funds received in advance for cash advance items under a prepaid funeral benefits contract in the manner required by Section 154.159 or 154.203.

(d) After the death of the contract beneficiary, the funeral provider shall apply the proportionate part of the trust or insurance policy proceeds received under the contract that is derived from advance payment of cash advance items to the current purchase price

for the items. To the extent the proportionate part of contract proceeds:

(1) is less than the current purchase price for the cash advance items, the funeral provider may collect additional money for the difference in exchange for delivering or providing the items as part of the contracted funeral; or

(2) is greater than the current purchase price for the cash advance items, the funeral provider shall promptly refund the excess amount unless that amount is offset against other amounts due to the funeral provider in connection with the contracted funeral.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 9, eff. September 1, 2009.

Sec. 154.152. REPRESENTATIONS REGARDING APPROVAL OF PERMIT HOLDER. A permit holder may represent that the department has approved or otherwise chosen a prepaid funeral vendor only with the following language: "The Texas Banking Department regulates the sale of prearranged funeral contracts" and "The form of this contract has been approved by the Department."

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

Sec. 154.153. ALLOCATION OF SALES PRICE. A seller may not increase the sales price of an item not covered by this chapter to allocate a lesser sales price to an item covered by this chapter.

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

Sec. 154.154. AGREEMENT TO PAY FINANCE CHARGE. A purchaser of a prepaid funeral benefits contract may agree in writing to pay the seller a finance charge in accordance with Chapter 345 on an amount due the seller on the contract.

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

Sec. 154.155. CANCELLATION OF CONTRACT. (a) A purchaser of a

prepaid funeral benefits contract may cancel the contract before maturity by giving written notice of cancellation to the seller on forms prescribed by the department. The seller shall maintain copies of the cancellation forms for examination by the department.

(b) Not later than the 30th day after the date of the cancellation notice, the seller of a trust-funded contract shall withdraw and pay to the purchaser money in the depository being held for the purchaser's use and benefit.

(c) The purchaser or seller may not make a partial cancellation or withdrawal.

(d) The purchaser of a trust-funded contract is entitled to receive the actual amount paid by the purchaser and half of all earnings attributable to that money, less the amount permitted to be retained as provided by Section 154.252, except as provided by Subsection (e) and by Sections 154.1511, 154.1551, and 154.254.

(e) A purchaser who cancels a contract on the solicitation of the seller is entitled to withdraw all money paid to the seller and all earnings attributable to that money. If the money is used to purchase a new prepaid funeral benefits contract under a solicitation by the seller, the new contract must protect the purchaser to an extent equal to or greater than that provided by the original contract, as determined by the department. Under the new contract, the cost to the purchaser of the same or substantially the same services or merchandise may not be greater than that provided by the canceled contract.

(f) The cancellation of an insurance-funded contract by the purchaser is subject to Section 154.205.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 699, Sec. 7, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 10, eff. September 1, 2009.

Sec. 154.1551. MODIFICATION AT TIME OF FUNERAL. (a) The funeral merchandise, funeral services, and cash advance items selected in a fully paid prepaid funeral benefits contract may be modified after the death of the beneficiary if the modification complies with this section or is otherwise agreed to in a writing

signed by the seller or funeral provider and the person charged with the disposition of the beneficiary's remains by Section 711.002(a), Health and Safety Code, except that if the purchaser of the contract is also the beneficiary:

(1) the contracted funeral merchandise and services may not be modified if the contract contains a clause that prohibits modification; and

(2) a modification may not change the type of disposition specified by the purchaser in the contract, whether by burial, cremation, or another alternative by which the purchaser's remains attain their final resting place, as provided by Section 711.002(g), Health and Safety Code.

(b) The person charged with the disposition of the beneficiary's remains by Section 711.002(a), Health and Safety Code, may make reasonable modifications to the funeral merchandise and services provided under a prepaid funeral contract at the time the funeral is performed, not to exceed 10 percent of the original purchase price of the contract. This subsection does not require the seller to:

(1) refund a portion of the funds attributable to the contract if the seller grants credit for surrender or exchange as provided by Subsection (a)(2);

(2) provide substituted or additional funeral merchandise or services in excess of credits granted under Subsection (a)(2) unless the seller receives additional compensation at current prices; or

(3) apply a portion of the funds attributable to the contract or credits granted under Subsection (a)(2) to another contract or funeral.

(c) The person charged with the disposition of the beneficiary's remains by Section 711.002(a), Health and Safety Code, may not modify a prepaid funeral benefits contract that has not been fully paid at the time of death of the beneficiary except as agreed to in a writing signed by the seller and the person.

(d) A modification of contracted funeral merchandise or services must comply with Subsection (b), and the value attributed to any contracted funeral merchandise or service that is surrendered or exchanged in the modification must be computed on a comparable time-price basis with the price charged for substituted funeral merchandise or service provided as part of the modification.

(e) A modification of cash advance items included in the contract under Section 154.1511 must comply with Subsection (f).

(f) A person charged with disposition of the beneficiary's remains may add, surrender, cancel, or modify any cash advance item included under the contract at the time the funeral is performed, provided that:

(1) the value attributed to any contracted funeral merchandise or service that is surrendered in a modification, determined as provided under Subsection (d), may be applied to the unpaid cost of contracted or additional cash advance items; and

(2) the funeral provider promptly refunds the proportionate part of the trust or insurance policy proceeds received under the contract that is derived from advance payment of a surrendered or canceled cash advance item to the extent the proceeds are not applied to the unpaid cost of additional cash advance items or additional funeral merchandise or services requested by the person charged with disposition of the beneficiary's remains.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 8, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 11, eff. September 1, 2009.

Sec. 154.156. WAIVER OF RIGHT OF CANCELLATION. (a) The purchaser of a prepaid funeral benefits contract may irrevocably waive the purchaser's right to cancel the contract under Section 154.155. The waiver must be in a separate writing signed by the purchaser and the seller and must comply with the plain language requirements for the form of a sales contract under Section 154.151.

(b) A waiver made under this section does not affect:

(1) a right the purchaser has under the contract to change the beneficiary of the contract;

(2) the purchaser's right to cancel the contract under Section 154.413;

(3) an abandonment of the money paid by the purchaser under the contract as provided by Subchapter G; or

(4) a modification to the contract as provided by Section 154.1551.

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

by Acts 2001, 77th Leg., ch. 699, Sec. 9, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 12, eff. September 1, 2009.

Sec. 154.157. PERFORMANCE OF CONTRACT. Delivery of funeral merchandise before death is not performance, in whole or in part, of a prepaid funeral benefits contract entered into after July 15, 1963.

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

Sec. 154.158. ENFORCEMENT OF CONTRACT. A seller that violates Section 154.101 may not enforce a prepaid funeral benefits contract, but the purchaser or an heir or legal representative of the purchaser is entitled to recover:

(1) the amount paid to the seller under the contract; and

(2) the amount paid to a fund or for an investment, security, or contract, including a contract or policy of insurance authorized by the Texas Department of Insurance.

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

Sec. 154.159. ADMINISTRATION OF MONEY RECEIVED. Money received for prepaid funeral benefits shall be administered as prescribed by Section 154.155 and Subchapters E and F, as applicable.

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

Sec. 154.160. AGENT; DEPOSIT OF MONEY. (a) A seller shall designate one or more agents by name or title.

(b) The seller shall notify the department of:

(1) the designation not later than the 10th day after the date the seller becomes subject to this chapter; and

(2) any change in the designation not later than the 10th day after the date of the change.

(c) An agent designated under this section is:

(1) considered a fiduciary for purposes of Section 32.45,

Penal Code; and

(2) responsible for the deposit of money collected under prepaid funeral benefits contracts.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 13, eff. September 1, 2009.

Sec. 154.161. RESPONSIBILITIES OF FUNERAL PROVIDER. (a) The funeral provider under a prepaid funeral benefits contract subject to this chapter shall:

(1) in compliance with applicable law, protect any nonpublic personal financial and health information of the purchaser and contract beneficiary in the possession of the funeral provider;

(2) after the death of the contract beneficiary:

(A) deliver the contracted funeral merchandise and services and cash advance items required under the contract, subject to Section 154.1551;

(B) prepare a written pre-need to at-need reconciliation to verify that the specified goods and services are delivered or performed for the agreed price and promptly refund any contract overcharges that may be revealed by the reconciliation;

(C) if advance payment of cash advance items was included in the contract, prepare a reconciliation of proceeds applied to cash advance items; and

(D) retain a copy of each reconciliation until the third anniversary of the date of service; and

(3) with respect to each prepaid funeral benefits contract for which the funeral provider is not also the seller:

(A) sign the reconciliations required by Subdivision (2);

(B) promptly deliver the records that verify contract performance to the seller, including the final at-need contract, the certificate of performance, and the reconciliations required under Subdivision (2);

(C) if requested by the seller, correct or explain any discrepancy in a reconciliation required under Subdivision (2);

(D) subject to Subsection (d), provide copies of any

other records or documentation related to the offer, sale, and performance of the contract that are reasonably requested by the seller or the department, including records related to any refund required by Section 154.1511 or 154.1551; and

(E) inform each seller with which the funeral provider has an outstanding contract of any closure of the provider's funeral establishments not later than the 15th day after the date of closure.

(b) The seller shall report to the department any discrepancy in a reconciliation required under Subsection (a)(2) that remains unresolved after a request for correction is made under Subsection (a)(3)(C).

(c) The trustee or insurance company may withhold payment to the funeral provider until each document the funeral provider is required to prepare and deliver to the seller, trustee, or insurance company is received, properly completed, and fully executed.

(d) The department may not request records or documentation from a funeral provider under Subsection (a)(3)(D) unless:

(1) the seller has notified the funeral provider of a discrepancy in a reconciliation and the discrepancy remains unresolved after a request for correction;

(2) the date of contract performance by the funeral provider is earlier than the third anniversary of the date of the initial request; and

(3) the department finds that:

(A) the amount of the discrepancy exceeds five percent of the total contract price; or

(B) sufficient discrepancies exist to indicate the presence of an inappropriate or unlawful pattern or practice of contract performance and documentation by the funeral provider.

(e) The department may not request a seller to obtain records or documentation described by Subsection (a)(3)(D) from a funeral provider if the department would be prohibited from requesting the documentation directly from the funeral provider because of the prohibition under Subsection (d)(2).

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 14, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 3, eff. September 1, 2013.

SUBCHAPTER E. INSURANCE-FUNDED PREPAID FUNERAL BENEFITS

Sec. 154.201. REQUIREMENTS FOR SOLICITATION OF INSURANCE-FUNDED BENEFITS. A seller may not solicit an individual's designation of prepaid funeral benefits to be paid from an insurance policy, unless the insurance policy meets the requirements of Section 154.2021.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 15, eff. September 1, 2009.

Sec. 154.202. EXECUTION OF CONTRACT IN CONJUNCTION WITH APPLICATION FOR POLICY. An insurance-funded prepaid funeral benefits contract must be executed in conjunction with the application for the issuance of the insurance policy.

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

Sec. 154.2021. REQUIREMENTS FOR INSURANCE POLICIES. (a) An insurance policy used to fund prepaid funeral benefits under this chapter must:

(1) be written on a form approved by the Texas Department of Insurance;

(2) be issued by an insurance company authorized by the Texas Department of Insurance to engage in the business of insurance in this state; and

(3) contain the following statement on the cover page or otherwise within the policy or a rider to the policy: "This policy is issued to fund a prepaid funeral benefits contract subject to Chapter 154 of the Texas Finance Code. Cancellation of the prepaid funeral benefits contract does not automatically cancel this policy."

(b) The aggregate initial face value of one or more insurance policies issued to fund a prepaid funeral benefits contract may not exceed the total contract price by more than five percent unless the purchaser:

(1) receives a conspicuous written disclosure of the purpose and amount of the excess coverage and how the insurance

benefit will be applied at contract maturity; and

(2) consents in writing to the purchase of the excess coverage.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 16, eff. September 1, 2009.

Sec. 154.203. PAYMENT OF PREMIUMS. (a) The premiums for an insurance policy that funds prepaid funeral benefits may only be collected by a licensed insurance agent appointed by the insurance company issuing the policy and shall be paid to the insurance company in accordance with the agency agreement between the insurance company and the agent.

(b) Receipt of premiums by the agent of the insurance company is considered receipt of premiums by the insurance company for purposes of continuing the policy in force.

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

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 17, eff. September 1, 2009.

Sec. 154.204. CONVERSION FROM TRUST-FUNDED PREPAID FUNERAL BENEFITS. (a) The department must approve a conversion from trust-funded prepaid funeral benefits to insurance-funded prepaid funeral benefits as safeguarding the rights and interests of the individual who purchases the prepaid funeral benefits contract.

(b) Each contract holder shall be notified in writing of:

(1) the terms of the proposed conversion; and

(2) the holder's right to decline the conversion.

(c) An application for approval of a conversion from trust-funded prepaid funeral benefits to insurance-funded prepaid funeral benefits must be:

(1) filed with the department on forms prescribed by the department; and

(2) accompanied by a conversion application fee set by the department under Section 154.051.

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

Sec. 154.205. CANCELLATION OF INSURANCE-FUNDED CONTRACT. (a) A purchaser of an insurance-funded prepaid funeral benefits contract may cancel the contract before maturity by giving written notice of cancellation to the permit holder. The permit holder shall maintain copies of the written notice of cancellation until the third anniversary of the date of receipt of notice.

(b) Cancellation of the contract under Subsection (a) does not automatically cancel the insurance policy funding the prepaid funeral benefits contract. The insurance policy may be canceled in accordance with the terms and conditions of the policy in exchange for the policy's cash surrender value.

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

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 18, eff. September 1, 2009.

Sec. 154.206. ASSIGNMENT OF RIGHT TO BENEFITS. (a) The purchaser of an insurance-funded contract may assign the purchaser's ownership of and rights to benefits under the insurance policy to the seller, the funeral provider, the trustee, or other person.

(b) An assignment to the seller, the funeral provider, or an affiliated trustee may not be made irrevocable unless:

(1) the assignment is made solely to facilitate the eligibility of the purchaser under Title XIX, Social Security Act (42 U.S.C. Section 1396 et seq.), or other law providing for a public assistance program; or

(2) the assignee is specifically prohibited from exercising any right under the policy except administration of the benefits.

(c) An assignee under this section is subject to a fiduciary duty to apply the insurance policy benefits as provided by the contract and this chapter.

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

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 19, eff. September 1, 2009.

Sec. 154.207. RECEIPT OF BENEFITS PAYABLE UNDER POLICY. (a) A seller or funeral provider that has been assigned the benefits payable under an insurance policy funding prepaid funeral benefits may not receive payment of the benefits until:

(1) the beneficiary named in the contract dies;

(2) the funeral service is completed;

(3) the funeral provider has completed the provider's obligations under Section 154.161(a) with respect to the contract; and

(4) the insurance company is presented with:

(A) certification from the funeral provider attesting to matters required by Subdivisions (2) and (3); and

(B) other documents as required by the insurance company to process and pay the claim.

(b) The seller shall maintain copies of the documentation submitted to the insurance company and a copy of the death certificate for examination by the department.

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

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 20, eff. September 1, 2009.

Sec. 154.208. ADVISORY COMMITTEE. (a) The commissioner shall appoint an advisory committee to review and make recommendations regarding the technical procedures and processes employed by the department to regulate insurance-funded prepaid funeral benefits and monitor compliance of sellers of insurance-funded contracts under this chapter, including recommendations relating to:

(1) the relevance and usefulness of records that the department requires a seller to maintain for examination purposes;

(2) the existence and identification of any specific record that an insurance company is required to maintain and produce under the Insurance Code that could be substituted as a record that meets the objectives and requirements of the department under this chapter;

(3) the scope, efficiency, and effectiveness of examination procedures employed by the department to verify compliance with this chapter; and

(4) any other matter submitted to the committee by the

commissioner.

(b) The advisory committee is composed of eight members appointed by the commissioner as follows:

(1) two representatives of the department;

(2) two representatives of funeral providers that actively sell and service insurance-funded contracts in this state; and

(3) four representatives of permit holders that actively sell insurance-funded contracts in this state, provided that representation should be reasonably balanced to include permit holders that sell for domestic insurance companies, foreign insurance companies, small insurance companies, and large insurance companies.

(c) At the request of the commissioner, the commissioner of insurance may appoint a representative of the Texas Department of Insurance to serve on the advisory committee.

(d) Not later than the 30th day after the date all of the initial appointments to the advisory committee have been made, the advisory committee shall meet and select a presiding officer. After the initial meeting, the advisory committee shall meet as necessary at the call of the commissioner.

(e) A member of the advisory committee serves without compensation. If authorized by the commissioner, a member of the advisory committee is entitled to reimbursement for reasonable expenses incurred in attending committee meetings.

(f) A recommendation of the advisory committee does not supersede the regulatory authority of the commissioner or the rulemaking authority of the commission under this chapter. The commissioner shall notify the commission of each recommendation of the advisory committee and the reasons for the recommendation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 21, eff. September 1, 2009.

SUBCHAPTER F. TRUST-FUNDED PREPAID FUNERAL BENEFITS

Sec. 154.251. APPLICABILITY. (a) This subchapter applies only to money paid or collected on a trust-funded prepaid funeral benefits contract entered into after July 15, 1963.

(b) Money paid or collected on a prepaid funeral benefits contract entered into before July 15, 1963, shall be handled in accordance with the law in effect on the date the contract was

entered into.

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

Sec. 154.252. RETENTION OF MONEY FOR EXPENSES. The seller of a trust-funded prepaid funeral benefits contract may retain for the seller's use and benefit an amount not to exceed one-half of all money collected or paid until the seller has received an amount equal to 10 percent of the total amount the purchaser agreed to pay under the contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 699, Sec. 10, eff. Sept. 1, 2001.

Sec. 154.253. DEPOSIT OF MONEY PAID OR COLLECTED. (a) Not later than the 30th day after the date of collection, the money, other than money retained as provided by Section 154.252, shall be deposited:

(1) in a financial institution that has its main office or a branch in this state in an interest-bearing restricted account insured by the federal government; or

(2) in trust with a financial institution that has its main office or a branch located in this state and is authorized to act as a fiduciary in this state, to be invested by the financial institution as trustee in accordance with this subchapter.

(b) An account described by Subsection (a), including a trust account, shall be carried in the name of the funeral provider or other entity to whom the purchaser makes payment and must include the words "prepaid funeral benefits" or "pre-need funeral benefits."

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.024, eff. Sept. 1, 1999. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 4, eff. September 1, 2013.

Sec. 154.254. AMOUNT PAYABLE ON CANCELLATION OF CONTRACT. A purchaser of a trust-funded prepaid funeral benefits contract who

cancels the contract during the first year of the contract when payments required under the contract are current is entitled to receive, regardless of the amount held in trust, the greater of:

(1) 90 percent of the actual amount paid by the purchaser; or

(2) the amount deposited in trust with respect to the purchaser's contract.

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

Sec. 154.255. STANDARD OF DUTY OF DEPOSITORY. A depository described by Section 154.253(a)(1) shall be held to the standard of duty of a fiduciary in holding, investing, or disbursing the money.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 720 (H.B. 2393), Sec. 1, eff. September 1, 2007.

Sec. 154.256. STANDARD OF DUTY OF TRUSTEE. A trustee described by Section 154.253(a)(2) shall be held to the standard of duty of a trustee under the Texas Trust Code (Subtitle B, Title 9, Property Code), provided that the provisions of the Texas Trust Code may not be expanded, restricted, eliminated, or otherwise altered by the provisions of the trust instrument in a manner that is inconsistent with the purposes, terms, distribution requirements, and other circumstances of a trust established under this chapter. In administering assets held in a prepaid funeral benefits trust, a trustee shall consider the trust beneficiaries to include the following two classes of persons to the extent of any beneficial interest:

(1) funeral providers or other persons entitled to payment after delivering a contracted funeral for which funds have been deposited in trust; and

(2) purchasers of or beneficiaries designated in prepaid funeral benefits contracts for which funds have been deposited in trust who:

(A) are entitled to receive a contracted funeral; or

(B) have the right to cancel a contract under Section

154.155 if not waived under Section 154.156.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 720 (H.B. 2393), Sec. 1, eff. September 1, 2007.

Sec. 154.257. INVESTMENT PLAN. (a) A permit holder or trustee, if the permit holder deposits the money with a financial institution as trustee, shall:

(1) adopt a written investment plan consistent with this section and Sections 154.256 and 154.258 that specifies the quality, maturity, and diversification of investments;

(2) at least annually, review the adequacy and implementation of the investment plan;

(3) maintain investment records covering each transaction; and

(4) maintain the investment plan in the principal offices of the permit holder and trustee.

(b) The permit holder shall provide the investment plan to the department with the filing of the permit holder's annual report.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.025, eff. Sept. 1, 1999.

Sec. 154.258. INVESTMENT AND MANAGEMENT OF TRUST ASSETS. (a) The trustee of a prepaid funeral benefits trust shall invest and manage trust assets in accordance with the Uniform Prudent Investor Act (Chapter 117, Property Code), in a manner consistent with the requirements of this chapter and the purposes, terms, distribution requirements, and other circumstances of the trust.

(b) The commission may adopt reasonable rules to administer and clarify law regarding the investment and management of prepaid funeral benefits trust funds, provided that the rules are consistent with the Uniform Prudent Investor Act (Chapter 117, Property Code), the requirements of this chapter, and the purposes, terms, distribution requirements, and other circumstances of a prepaid funeral benefits trust, including rules to:

(1) define trust and investment terms;

(2) specify standards applicable to the written investment plan required by Section 154.257; and

(3) establish guidelines, rebuttable presumptions, or safe harbor provisions with respect to suitable investments and investment strategies for a prepaid funeral benefits trust.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 720, Sec. 4(1), eff. September 1, 2007.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 720, Sec. 4(1), eff. September 1, 2007.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 720, Sec. 4(1), eff. September 1, 2007.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.41(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 344, Sec. 2.026, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 6.028, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 720 (H.B. 2393), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 720 (H.B. 2393), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 720 (H.B. 2393), Sec. 4(1), eff. September 1, 2007.

Sec. 154.260. USE OF MONEY TO PURCHASE, LEASE, OR INVEST IN ASSET OWNED BY SELLER OR FUNERAL PROVIDER. (a) The depository of money under Section 154.253 must obtain the commissioner's prior written approval to use that money to purchase, lease, or invest in an asset owned by the seller or funeral provider or an affiliate of the seller or funeral provider.

(b) The commissioner by order may disapprove a transaction described by Subsection (a) on the ground that it would materially adversely affect the interests of the purchasers of prepaid funeral benefits contracts.

(c) The commissioner shall enter an order approving or disapproving the transaction not later than the 30th day after the date the commissioner receives written notification by the permit holder. The transaction is considered approved if the commissioner does not act within that period.

(d) The order takes effect as proposed unless the permit holder requests a hearing not later than the 10th day after the date of the order.

(e) In this section, "affiliate" means a person or entity directly or indirectly controlling, controlled by, or under common control with a permit holder or funeral provider.

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

Sec. 154.261. WITHDRAWAL OF EARNINGS TO PAY CERTAIN EXPENSES. (a) The seller of a trust-funded prepaid funeral benefits contract may withdraw money from earnings on an account described by Section 154.253 to pay:

(1) reasonable and necessary trustee's fees or depository fees;

(2) the examination fee for one examination by the department each calendar year; or

(3) the expense of preparation of financial statements required by the department, including those financial statements required by the department instead of an examination.

(b) With the department's prior approval, the seller may withdraw money from earnings on an account to pay:

(1) any tax incurred because of the existence of the account; or

(2) an assessment under Subchapter H.

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

Sec. 154.262. WITHDRAWAL OF MONEY ON DEATH OF BENEFICIARY. (a) The seller of a trust-funded prepaid funeral benefits contract may withdraw an amount equal to the original contract amount paid by the purchaser and the earnings attributable to the contract, less the amount retained under Section 154.252, after:

(1) the beneficiary named in the contract dies;

(2) the funeral service is completed;

(3) the funeral provider has completed the provider's obligations under Section 154.161(a) with respect to the contract; and

(4) the depository is presented with:

(A) appropriate affidavits by an officer or agent of the seller on forms prescribed by the department, attesting to matters required by Subdivisions (2) and (3); and

(B) a certified copy of the death certificate.

(b) The seller shall maintain copies of the affidavits and death certificate for examination by the department.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 22, eff. September 1, 2009.

Sec. 154.263. WITHDRAWAL OF EARNINGS ATTRIBUTABLE TO CONTRACT. On the maturity date of a trust-funded prepaid funeral benefits contract as provided by Section 154.262 and after the funeral provider has performed its obligations under the contract, or at the time of cancellation of the contract as provided by Section 154.155 or 154.254, the seller may withdraw from an account described by Section 154.253:

(1) the proportionate part of the earnings that the amount deposited under the contract bears to the total amount deposited from all unmatured contracts, less the amount of excess earnings that was withdrawn in accordance with prior law; or

(2) if the commissioner has determined that the records of the permit holder are adequate to allow this method to be exercised accurately, an amount equal to the actual earnings on individual matured contracts, less any properly allocated expenses permitted by this subchapter and less the amount of excess earnings that was withdrawn in accordance with prior law.

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

Sec. 154.264. ACCOUNTING RECORDS. A seller shall maintain accounting records showing the amount deposited or invested under this subchapter with respect to each contract.

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

Sec. 154.265. DEFAULT UNDER CERTAIN CONTRACTS. (a) Notwithstanding any other law, the purchaser of a trust-funded prepaid funeral benefits contract may not be considered in default under the contract if:

(1) the purchaser has paid at least 85 percent of the contract price; and

(2) the purchaser was unable to pay due to extenuating financial circumstances.

(b) A funeral provider is not required to provide funeral merchandise or services under a trust-funded prepaid funeral benefits contract unless any remaining balance, including any applicable finance charge, owed under the contract is paid before the funeral service or the funeral provider agrees in writing to another payment arrangement.

(c) This section does not affect a purchaser's right to cancel a trust-funded prepaid funeral benefits contract.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 1, eff. September 1, 2009.

SUBCHAPTER G. ABANDONED CONTRACTS

Sec. 154.301. PRESUMPTION OF ABANDONMENT. (a) Money paid by a purchaser of a prepaid funeral benefits contract is personal property subject to presumption of abandonment and delivery to the comptroller under Title 6, Property Code. This subchapter controls in case of conflict with that title.

(b) Money paid by a purchaser of a prepaid funeral benefits contract and held in the name of the seller at a depository under Subchapter F is presumed abandoned if:

(1) the amount due the seller from the purchaser under the contract has been collected and:

(A) the seller has not known the existence and location of the purchaser or the beneficiary of the contract for the three preceding years;

(B) according to the knowledge and records of the seller, a claim to the money or contract has not been asserted or an act of ownership of the money or contract has not been exercised during the three preceding years;

(C) at least 60 years have elapsed since the date the

purchaser executed the contract; and

(D) at least 90 years have elapsed since the date of birth of the beneficiary of the contract; or

(2) the amount due the seller from the purchaser under the contract has not been paid and during the three preceding years:

(A) the purchaser has not made a payment to the seller under the contract;

(B) the seller has not known the existence and location of the purchaser or the beneficiary of the contract; and

(C) according to the knowledge and records of the seller, a claim to the money or contract has not been asserted and an act of ownership of the money or contract has not been exercised.

(c) For purposes of Title 6, Property Code, the seller of the contract for which money is presumed abandoned under Subsection (b) is the holder of the money, and the purchaser or the beneficiary of the contract is the owner of the money.

(d) The presumption of abandonment provided by Subsection (b) does not apply to:

(1) money retained by the seller to cover selling expenses, service costs, and general overhead, as provided by Section 154.252; and

(2) earnings attributable to money paid by the purchaser under the contract.

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

Sec. 154.302. NOTICE OF ABANDONED MONEY. On March 1 of each year, a seller that holds money presumed abandoned under Section 154.301(b) shall furnish the commissioner with an acknowledged written notice of the abandoned money not later than the following June 1. The notice must include:

(1) the name and address, if known, of each person who appears to be the purchaser or the beneficiary of the contract;

(2) the identification number, if any, of the contract;

(3) the total amount paid on the contract;

(4) the amount paid on the contract and held at the depository;

(5) the earnings of the contract; and

(6) a statement by the seller recognizing the seller's

obligation and intent to deliver the abandoned money to the comptroller in accordance with this subchapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 446 (S.B. 1822), Sec. 1, eff. September 1, 2019.

Sec. 154.303. AUTHORIZATION TO WITHDRAW MONEY. (a) Not later than the 15th day after the date the notice required by Section 154.302 is received, the commissioner shall give the seller written authorization to:

(1) withdraw the money presumed abandoned as specified in the notice; and

(2) subject to Subsection (b), withdraw and retain the money specified in the notice that represents the earnings attributable to the abandoned money.

(b) The commissioner may refuse to authorize the seller to withdraw the earnings described by Subsection (a)(2) only if:

(1) the department has canceled or refused to renew the seller's permit to sell prepaid funeral benefits;

(2) the seller is the subject of a pending proceeding to cancel the seller's permit to sell prepaid funeral benefits; or

(3) the department has:

(A) determined from an examination of the seller's records that the seller has made withdrawals from accounts maintained by the seller that were not authorized under this chapter; and

(B) previously given written notice to the seller of that determination.

(c) Not later than the 15th day after the date the notice under Section 154.302 is received, the commissioner shall give written notice to the seller stating the reason the commissioner will not authorize the seller to withdraw the earnings described by Subsection (a)(2).

(d) A seller that did not receive the commissioner's authorization to withdraw earnings because of Subsection (b)(2) is entitled to withdraw and retain the earnings if the department or a court subsequently determines that the seller's permit should not be canceled.

(e) A seller that did not receive the commissioner's authorization to withdraw earnings because of Subsection (b)(3) is entitled to withdraw and retain the earnings on redepositing in the accounts the amount of the unauthorized withdrawals.

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

Sec. 154.304. DELIVERY TO COMPTROLLER OF ABANDONED MONEY AND REPORT. Not later than the first July 1 after the date a seller is required to furnish notice to the commissioner under Section 154.302, the seller shall deliver to the comptroller:

(1) the abandoned money; and

(2) the report required to be filed under Chapter 74, Property Code.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 446 (S.B. 1822), Sec. 2, eff. September 1, 2019.

Sec. 154.305. DISCHARGE OF CONTRACTUAL OBLIGATIONS; INDEMNITY OF SELLER. (a) The delivery of abandoned money and reporting to the comptroller under Section 154.304:

(1) relieves the seller of the obligations and liabilities under the prepaid funeral benefits contract;

(2) cancels the prepaid funeral benefits contract; and

(3) discharges the obligations and liabilities of and claims against the seller and funeral provider.

(b) A seller that delivers money to the comptroller under Section 154.304 shall be indemnified under Section 74.304, Property Code, for any claim that may be made with respect to the property.

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

Sec. 154.306. LIABILITY AND OBLIGATIONS OF COMPTROLLER. (a) The comptroller is liable to the purchaser or beneficiary of a prepaid funeral benefits contract presumed abandoned under this subchapter only to the extent of money that is attributable to the

contract and delivered to the comptroller.

(b) The comptroller is not obligated to perform the seller's duties under an abandoned prepaid funeral benefits contract.

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

Sec. 154.307. RECOURSE OF PURCHASER OR BENEFICIARY. A purchaser's or beneficiary's sole recourse after a seller has delivered abandoned money and reported to the comptroller under Section 154.304 is to file a claim with the comptroller as provided by Chapter 74, Property Code.

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

SUBCHAPTER H. GUARANTY FUND

Sec. 154.351. MAINTENANCE OF GUARANTY FUND. (a) The commission by rule shall establish and the department shall maintain a fund to guarantee performance by sellers of prepaid funeral benefits contracts and funeral providers under those contracts of their obligations to the purchasers.

(b) Except as provided by Subsection (c), for purposes of claims and assessments, the department shall maintain separate accounts within the fund for trust-funded contracts and insurance-funded contracts.

(c) The advisory council under Section 154.355 may authorize borrowing between accounts to facilitate prompt and efficient resolution of claims against an account with an insufficient balance if:

(1) the indebted account is obligated to pay interest at a rate that will reasonably compensate the lending account for lost earnings;

(2) required or planned assessments for the benefit of the indebted account are pending and sufficient to repay the lending account; and

(3) assessments collected for the benefit of the indebted account are transferred to the lending account until the borrowed amount plus interest has been repaid.

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

by Acts 2001, 77th Leg., ch. 867, Sec. 80, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 23, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 559 (H.B. 3004), Sec. 1, eff. June 17, 2011.

Sec. 154.352. ASSESSMENT ON SALES CONTRACTS. (a) The department shall assess and collect from a seller not more than $1 for each unmatured prepaid funeral benefits contract sold during each calendar year and shall deposit the assessments in the fund.

(b) The department shall stop assessing the amounts required by Subsection (a) when the amount in the fund first reaches $1 million.

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

Sec. 154.3525. ASSESSMENT ON INSURANCE-FUNDED CONTRACTS. (a) The department shall assess and collect from a seller not more than $1 for each insurance-funded contract sold during each calendar year and shall deposit the assessments in the insurance-funded contract account within the fund.

(b) The department shall stop assessing the amounts required by Subsection (a) when the amount in the insurance-funded contract account reaches $1 million.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 24, eff. September 1, 2009.

Sec. 154.353. DEPOSIT OF FUND OR PORTION OF FUND. (a) The fund or a portion of the fund may be deposited:

(1) with the comptroller;

(2) with a federally insured financial institution that has its main office or a branch in this state; or

(3) in trust with a financial institution that has its main office or a branch in this state and is authorized to act as a fiduciary in this state.

(b) If the fund or a portion of the fund is deposited with the comptroller, the comptroller shall manage the deposit as trustee of

money outside the state treasury.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.027, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 559 (H.B. 3004), Sec. 2, eff. June 17, 2011.

Sec. 154.354. USE OF FUND EARNINGS. The department may use the earnings from the fund to operate and maintain the fund.

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

Sec. 154.355. ADVISORY COUNCIL. (a) An advisory council composed of the following individuals shall supervise the operation and maintenance of the fund:

(1) the commissioner or the commissioner's representative;

(2) two representatives of the prepaid funeral industry appointed by the commission, one of whom represents trust-funded prepaid funeral benefits contract sellers and one of whom represents insurance-funded prepaid funeral benefits contract sellers; and

(3) one consumer representative appointed by the commission.

(b) The prepaid funeral industry and consumer representatives serve two-year terms and may not serve more than four terms.

(c) The commissioner shall render a final decision if there is a tie vote by members of the advisory council.

(d) Notwithstanding Chapter 551, Government Code, or any other law, the advisory council may hold an open or closed meeting by telephone conference call, videoconference, or other similar telecommunication method if:

(1) notice is given for the meeting as for other meetings;

(2) the notice specifies a location for the meeting at which the public may attend;

(3) each part of the meeting that is required to be open to the public is audible to the public at the location specified in the notice of the meeting; and

(4) the meeting is recorded by electronic or other means and the recording of each portion of the meeting that is required to

be open to the public is made available to the public.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 25, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 559 (H.B. 3004), Sec. 3, eff. June 17, 2011.

Sec. 154.3551. LIMIT ON LIABILITY. (a) A member of the advisory council is not personally liable for damages arising from the member's official act or omission under this subchapter unless the act or omission is corrupt or malicious.

(b) The attorney general shall defend an action brought against a member of the advisory council arising from an official act or omission under this subchapter, including an action instituted after the defendant's service with the advisory council has terminated.

(c) The attorney general is not required to defend a member of the advisory council against an action relating to:

(1) the disposition of a claim filed under this subchapter; or

(2) any issue other than the applicability or effect of the limitation on liability under this section.

(d) The commissioner on behalf of the fund, with the advice and consent of the advisory council, may contract with the attorney general under Chapter 771, Government Code, for legal services not covered by this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 26, eff. September 1, 2009.

Sec. 154.356. ASSESSMENT ON OUTSTANDING TRUST-FUNDED CONTRACTS TO PAY CLAIMS. (a) To pay a claim against the fund when the balance of the trust-funded contract account is insufficient to pay that claim, the advisory council may assess each permit holder that has outstanding trust-funded contracts an amount based on the permit holder's proportionate share of the purchasers' deposits on all outstanding trust-funded contracts determined as of the end of the preceding calendar year.

(b) The assessments shall be deposited in the trust-funded contract account within the fund and administered by the department and the advisory council in accordance with commission rules.

(c) An assessment made under this section is in addition to any assessment required by Section 154.352.

(d) A seller whose permit is revoked or surrendered remains liable for any unpaid assessment made before the date of the revocation or surrender.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 81, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 27, eff. September 1, 2009.

Sec. 154.3565. ASSESSMENT ON OUTSTANDING INSURANCE-FUNDED CONTRACTS TO PAY CLAIMS. (a) To pay a claim against the fund when the balance of the insurance-funded contract account is insufficient to pay that claim, the advisory council may assess each permit holder that has outstanding insurance-funded contracts an amount based on the permit holder's proportionate share of all outstanding insurance-funded contracts determined as of the end of the preceding calendar year.

(b) The assessments shall be deposited in the insurance-funded contract account within the fund and administered by the department and the advisory council in accordance with commission rules.

(c) An assessment made under this section is in addition to any assessment required by Section 154.3525.

(d) A seller whose permit is revoked or surrendered remains liable for any unpaid assessment made before the date of the revocation or surrender.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 28, eff. September 1, 2009.

Sec. 154.357. CLAIM AGAINST SELLER, FUNERAL PROVIDER, OR DEPOSITORY. The department may assert a claim against a seller, funeral provider, or depository that commits a violation of this chapter that could result in a claim against the fund.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 559 (H.B. 3004), Sec. 4, eff. June 17, 2011.

Sec. 154.358. CLAIMS AGAINST FUND. (a) The payment of a claim or expense from the fund is a matter of privilege and not of right, and a person does not have a vested right in the fund as a beneficiary or otherwise.

(b) A claim against the fund may be made by:

(1) a purchaser of a prepaid funeral benefits contract;

(2) a purchaser's estate;

(3) a permit holder or funeral provider who assumes or performs a contract; or

(4) a claimant for the benefit of a group of purchasers of prepaid funeral benefits contracts as part of a plan to arrange for another permit holder or funeral provider to assume the contract obligations.

(c) An approved claim or expense relating to a trust-funded contract may be paid only from the fund's trust-funded contract account. An approved claim or expense relating to an insurance-funded contract may be paid only from the fund's insurance-funded contract account.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 29, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 559 (H.B. 3004), Sec. 5, eff. June 17, 2011.

Sec. 154.359. PERMISSIBLE USES OF FUND. (a) In addition to uses authorized by Section 154.354, the fund may be used to pay:

(1) a loss attributable to the failure or inability of a permit holder or funeral provider to perform its obligations under a prepaid funeral benefits contract;

(2) expenses of a plan to arrange for another permit holder or funeral provider to assume the obligations of the permit holder or funeral provider under a prepaid funeral benefits contract or a group

of prepaid funeral benefits contracts if the commissioner finds, with the advice and consent of the advisory council, that the plan is reasonable and in the best interests of the contract beneficiaries;

(3) administrative expenses related to servicing and handling outstanding prepaid funeral benefits contracts:

(A) that have not been assumed by another permit holder; or

(B) the obligations under which have not been assumed by another funeral provider;

(4) expenses for administering the receivership of an insolvent permit holder or funeral provider if the permit holder's or funeral provider's assets are insufficient to pay those expenses; and

(5) expenses to employ and compensate a consultant, an agent, legal counsel, an accountant, and any other person appropriate and consistent with the purpose of the fund, as determined by the advisory council.

(b) The fund may not be required to pay any claimant an amount that exceeds the contractual obligations specified by the express written terms of the prepaid funeral benefits contract, including:

(1) a claim based on marketing materials;

(2) a claim based on side letters or other documents that do not comply with the requirements of this chapter;

(3) a claim based on misrepresentation of the benefits conferred by the contract or a funding insurance policy; or

(4) a claim for court costs, attorney's fees, penalties, or consequential or incidental damages.

(c) A claim may not be approved for a loss to the extent the claim is insured, bonded, or otherwise covered, protected, or reimbursed from other sources, including coverage provided by the Texas Life and Health Insurance Guaranty Association under Chapter 463, Insurance Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 29, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 14 (S.B. 567), Sec. 11, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 559 (H.B. 3004), Sec. 6, eff. June 17, 2011.

Sec. 154.3595. DEFAULT BY FUNERAL PROVIDER. (a) This section applies to a permit holder that administers a prepaid funeral benefits contract for which:

(1) the permit holder is not the funeral provider; and

(2) there is an actual or anticipated failure or inability of the funeral provider to perform its obligations under the contract.

(a-1) A permit holder to which this section applies shall notify each purchaser of an outstanding prepaid funeral benefits contract of any closure of the funeral provider named in the contract not later than the 90th day after the date of its receipt of notice of the closure.

(b) A permit holder to which this section applies shall make a reasonable effort to find a substitute funeral provider willing to assume the contractual obligations of the defaulting funeral provider. A reasonable effort includes:

(1) identifying and contacting at least three funeral providers within the same community or geographic service area as the defaulting funeral provider;

(2) if at least three funeral providers do not exist within the same community or geographic service area, identifying and contacting at least three funeral providers within a 50-mile radius of the defaulting funeral provider; and

(3) for both Subdivisions (1) and (2), first contacting those funeral providers that the permit holder considers have services and facilities that are comparable to the defaulting funeral provider.

(c) A permit holder that is unable to locate a substitute funeral provider as required by Subsection (b) shall submit information to the advisory council describing or identifying:

(1) all prepaid funeral benefits contracts to which the defaulting funeral provider is a party;

(2) to the extent known, the circumstances underlying the default by the original funeral provider and any attempt by the permit holder to address the default with the defaulting funeral provider;

(3) any effort by the permit holder to find a substitute funeral provider, including:

(A) the location and identity of each contacted funeral provider;

(B) the terms offered to the funeral provider; and

(C) the terms of any counteroffer or other response made by the funeral provider; and

(4) other information known to the permit holder that the permit holder believes may be relevant or useful to the advisory council.

(d) The permit holder shall cooperate with the department and the advisory council in facilitating selection of a substitute funeral provider by complying with any reasonable request for:

(1) additional information;

(2) assistance in negotiating with a potential substitute funeral provider; or

(3) assistance in communicating with a purchaser of an affected prepaid funeral benefits contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 559 (H.B. 3004), Sec. 7, eff. June 17, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 5, eff. September 1, 2013.

Sec. 154.360. SUBROGATION. (a) A person receiving a benefit under this subchapter, including a payment of or on account of a contractual obligation or provision of substitute or alternative prepaid funeral benefits, is considered to have assigned to the fund the rights under, and any cause of action relating to, the prepaid funeral benefits contract to the extent of the benefit received. Notwithstanding this assignment by law, the commissioner may require a payee to execute a formal assignment of the person's rights and cause of action to the fund as a condition of receiving a right or benefit under this subchapter.

(b) The fund retains all common law rights of subrogation and any other equitable or legal remedy that would have been available to a recipient of benefits from the fund with respect to a prepaid funeral benefits contract.

(c) The commissioner, on behalf of the fund, may bring an action against any person and may employ and compensate a consultant, an agent, legal counsel, an accountant, or any other person the commissioner considers appropriate to collect a subrogated amount.

Payment shall be made from the appropriate account within the fund for these services. Any recovery of a subrogated amount shall be deposited in the appropriate account within the fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 29, eff. September 1, 2009.

SUBCHAPTER I. CRIMINAL PENALTIES AND CIVIL REMEDIES

Sec. 154.400. INVESTIGATION AND SUBPOENA AUTHORITY. (a) If the commissioner has a reasonable suspicion of a misallocation or defalcation of prepaid funeral funds or an unauthorized sale of prepaid funeral benefits, the commissioner may conduct investigations as the commissioner considers necessary or appropriate to determine whether:

(1) a misallocation or defalcation of prepaid funeral funds has occurred; or

(2) an unauthorized sale of prepaid funeral benefits has occurred.

(b) The commissioner may issue a subpoena to compel the attendance and testimony of a person under oath or the production of documents related to an investigation conducted under Subsection (a). The subpoena may require attendance and production at the department's offices in Austin, Texas, or at another place the commissioner designates.

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

(d) If a person refuses to obey a subpoena, a district court in Travis County or the county in which the subpoena was served, on application by the commissioner, may issue an order requiring the person to appear before the commissioner and produce documents or give evidence regarding the matter under investigation.

(e) The commissioner may recover the reasonable costs incurred in connection with an investigation conducted under this section from the person who is the subject of the investigation if, after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact determines that the person violated this chapter or a rule adopted under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 6, eff. September 1, 2013.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 446 (S.B. 1822), Sec. 3, eff. September 1, 2019.

Sec. 154.401. CRIMINAL PENALTY FOR CERTAIN VIOLATIONS OF CHAPTER. (a) Except as provided by Section 154.402, an officer, director, agent, or employee of a seller commits an offense if the person:

(1) makes or attempts to make a contract in violation of this chapter;

(2) refuses to allow an inspection of the seller's records relating to the sale of prepaid funeral benefits;

(3) engages in fraud, deception, misrepresentation, or another dishonest practice in the sale of a contract subject to this chapter; or

(4) otherwise violates this chapter.

(b) An offense under this section for which a penalty is not expressly provided by this subchapter is punishable by:

(1) a fine of not less than $100 or more than $500;

(2) confinement in the county jail for a term of not less than one month or more than six months; or

(3) both the fine and confinement.

(c) Each violation of this chapter is a separate offense and shall be prosecuted individually.

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

Sec. 154.402. CRIMINAL PENALTY RELATING TO DEPOSIT OR WITHDRAWAL OF MONEY. (a) A person commits an offense if the person:

(1) fails to deposit money in compliance with this chapter; or

(2) withdraws money in a manner inconsistent with this chapter.

(b) An offense under this section is punishable as if it were an offense under Section 32.45, Penal Code.

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

Sec. 154.403. CRIMINAL PENALTY FOR FAILURE TO FILE REPORT. (a) An officer of a seller commits an offense if the officer fails or refuses to file an annual report required by Section 154.052 before the 31st day after the date the officer is notified by the department of the requirement.

(b) An offense under this section is a misdemeanor and is punishable as provided by Section 154.401.

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

Sec. 154.404. CRIMINAL PENALTY FOR FAILURE TO DELIVER MONEY TO DESIGNATED AGENT. (a) A seller or a person acting on behalf of a seller commits an offense if the seller or person:

(1) collects money under a prepaid funeral benefits contract; and

(2) fails to deliver the money to a designated agent of the seller before the 31st day after the date it is collected.

(b) An offense under this section is punishable as if it were an offense under Section 32.45, Penal Code.

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

Sec. 154.405. CRIMINAL PENALTY FOR AGENT'S FAILURE TO DEPOSIT CERTAIN MONEY. (a) A designated agent of a seller commits an offense if the agent fails to deposit money collected under a prepaid funeral benefits contract before the 31st day after the date it is received by the agent.

(b) It is an exception to the application of this section that the failure to make a deposit is inadvertent and is corrected before the 11th day after the date the seller discovers the failure.

(c) An offense under this section is punishable as if it were an offense under Section 32.45, Penal Code.

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

Sec. 154.406. ADMINISTRATIVE PENALTY. (a) After notice and opportunity for hearing, the commissioner may impose an administrative penalty on a person who:

(1) violates this chapter or a final order of the commissioner or rule of the commission and does not correct the violation before the 31st day after the date the person receives written notice of the violation from the department; or

(2) engages in a pattern of violations, as determined by the commissioner.

(b) The amount of the penalty for each violation may not exceed $1,000 for each day the violation occurs.

(c) In determining the amount of the penalty, the commissioner shall consider the seriousness of the violation, the person's history of violations, and the person's good faith in attempting to comply with this chapter.

(d) The imposition of a penalty under this section is subject to judicial review as a contested case under Chapter 2001, Government Code.

(e) The commissioner may collect the penalty in the same manner that a money judgment is enforced in district court.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 699, Sec. 11, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 867, Sec. 82, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 8.003, eff. Sept. 1, 2003.

Sec. 154.4061. PATTERN OF WILFUL DISREGARD. (a) If, after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission, the trier of fact may recommend to the commissioner that the maximum administrative penalty permitted under Section 154.406 be imposed on the person committing the violation or that the commissioner cancel or not renew the person's permit under this chapter.

(b) For the purposes of this section, violations corrected as provided by Section 154.406 may be included in determining whether a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission exists.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 12, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 7, eff. September 1, 2013.

Sec. 154.407. INJUNCTIVE RELIEF. The commissioner may sue in a district court in Travis County or the county in which the violation occurred to enjoin a violation or threatened violation of:

(1) this chapter; or

(2) a final order of the commissioner or rule of the commission.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 83, eff. Sept. 1, 2001. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 8, eff. September 1, 2013.

Sec. 154.408. CEASE AND DESIST ORDER. (a) The commissioner may issue a cease and desist order to a person if the commissioner finds by examination or other credible evidence that the person has violated a law of this state relating to the sale of prepaid funeral benefits, including a violation of this chapter or a final order of the commissioner or rule of the commission.

(b) The order must state:

(1) with reasonable certainty the grounds for the order; and

(2) the effective date of the order.

(c) The order shall be served on the person named in the order by certified mail, return receipt requested, to the last known address of the person.

(d) Except as provided by Section 154.4081, the order takes effect as proposed, except that the order may not take effect before the 16th day after the date the order is mailed unless the person named in the order requests a hearing not later than the 15th day after the date the order is mailed.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 84, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 30, eff.

September 1, 2009.

Sec. 154.4081. EMERGENCY ORDER. (a) The commissioner may issue an emergency order that takes effect immediately if the commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a prepaid funeral benefits contract.

(b) An emergency order remains in effect unless stayed by the commissioner.

(c) The person named in the order may request in writing an opportunity for a hearing to show that the emergency order should be stayed. The written request for a hearing must be filed with the commissioner not later than the 30th day after the date on which the order is hand-delivered or the order is mailed, whichever date is earlier. On receipt of the request, the commissioner shall set a time for the hearing before the 22nd day after the date the commissioner received the request, unless extended at the request of the person named in the order.

(d) The hearing is an administrative hearing relating to the validity of findings that support immediate effect of the order.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 31, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 9, eff. September 1, 2013.

Sec. 154.409. SUIT BY ATTORNEY GENERAL. (a) The department may notify the attorney general of a violation of this chapter.

(b) The attorney general shall institute suit in the name of this state against a person who violates this chapter in a district court in Travis County or the county in which the violation occurred.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 10, eff. September 1, 2013.

Sec. 154.410. QUO WARRANTO PROCEEDINGS. (a) The attorney general may institute a quo warranto proceeding in a district court of Travis County to forfeit the charter or the right to do business of a corporation an officer, director, agent, or employee of which refuses or fails to correct a violation of this chapter after the department or attorney general notifies the officer, director, agent, or employee of the violation.

(b) Thirty days is considered a sufficient period to correct the violation after notice from the department or attorney general.

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

Sec. 154.411. RESTITUTION. The commissioner may issue an order to a person requiring restitution if, after notice and opportunity for hearing, the commissioner finds that the person:

(1) failed to deposit money in accordance with Subchapter F; or

(2) misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to the beneficiary under a prepaid funeral benefits contract.

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

Sec. 154.412. SEIZURE OF PREPAID FUNERAL ACCOUNTS AND RECORDS. (a) The commissioner may issue an order to seize accounts in which prepaid funeral funds, including earnings, may be held and may issue an order to seize the records that relate to the sale of prepaid funeral benefits if the commissioner finds, by examination or other credible evidence, that the person:

(1) failed to deposit or remit money in accordance with Subchapter E or F;

(2) misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to the beneficiary under a prepaid funeral benefits contract;

(3) refused to submit to examination by the department;

(4) was the subject of an order to cancel, suspend, or refuse to renew a permit; or

(5) does not hold a permit or transferred the ownership of its business to another person who does not hold a permit.

(b) An order shall be served on the person named in the order by certified mail, return receipt requested, to the last known address of the person.

(c) An order takes effect immediately, and remains in effect unless stayed by the commissioner, if the commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a prepaid funeral benefits contract. If such a threat does not exist, the order must state the effective date, which may not be before the 16th day after the date the order is mailed.

(c-1) An emergency order remains in effect unless stayed by the commissioner. The person named in the order may request in writing an opportunity for a hearing to show that the emergency order should be stayed. The written request for a hearing must be filed with the commissioner not later than the 30th day after the date on which the order is hand-delivered or the order is mailed, whichever date is earlier. On receipt of the request, the commissioner shall set a time before the 22nd day after the date the commissioner received the request, unless extended at the request of the person named in the order. The hearing is an administrative hearing relating to the findings that support immediate effect of the order.

(d) A nonemergency order takes effect as proposed unless the person named in the order requests a hearing not later than the 15th day after the date the order is mailed.

(e) Premiums received on the disposition of a contract related to the seizure of prepaid funeral money shall be handled as provided by Sections 154.111 and 154.413.

(f) After the issuance of an order under this section, the commissioner may initiate an administrative claim for ancillary relief, including a claim for:

(1) costs incurred in the administration, transfer, or other disposition of the seized assets and records; or

(2) costs reasonably expected to be incurred in connection with the administration and performance of any outstanding prepaid funeral benefits contracts sold by a person subject to the order.

(g) The remedy provided by Subsection (f) is not exclusive and does not limit the commissioner's discretion to seek an additional remedy authorized under this subchapter.

(h) On certification by the commissioner, a record seized as provided by Subsection (a) or a record created by or filed with the department in connection with a seizure is admissible as evidence in

any proceeding before the commissioner without prior proof of its correctness and without other proof. The certified record or a certified copy of the record is prima facie evidence of the facts contained in the record. This subsection does not limit another provision of this subtitle or a provision of another 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 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 32, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 33, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 11, eff. September 1, 2013.

Sec. 154.413. NOTIFICATION OF PURCHASER. Not later than the 30th day after the date prepaid funeral money is seized under Section 154.412, the commissioner may notify each known person who purchased prepaid funeral benefits under a contract from the permit holder whose permit is canceled. The notice must:

(1) include an explanation of the procedures under this chapter for canceling the contract and claiming money that may be due the person if the person elects to cancel;

(2) inform the person on continuing to make payments under the contract if the person elects to keep the contract in force; and

(3) inform the person that if the person elects to keep the contract in force the commissioner will transfer:

(A) responsibility to perform the contract to a responsible successor permit holder selected by the commissioner; or

(B) the seized money to the fund maintained under Section 154.351,subject to the claims process prescribed by rule under Subchapter H.

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

Sec. 154.414. LIQUIDATION OF BUSINESS AND AFFAIRS OF PERSON FOLLOWING SEIZURE OF MONEY AND RECORDS. After an order issued under Section 154.412(a) becomes final and unappealable, the commissioner

may petition a district court in Travis County or in the county in which a person required to hold a permit under this chapter resides to request the issuance of an order to show cause why the business and affairs of that person should not be liquidated and a receiver appointed by the court for that purpose if:

(1) the person:

(A) failed to deposit money in accordance with Subchapter F;

(B) misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to that person that belongs to the beneficiary under a prepaid funeral benefits contract; or

(C) allowed the person's permit to lapse or had the permit revoked under this chapter and did not make adequate provision for the administration of the money deposited with the person for prepaid funeral benefits contracts in accordance with the contract and applicable law, including rules; and

(2) the person failed or refused to correct the violation before the 31st day after the date the person received written notice from the commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 12, eff. September 1, 2013.

Sec. 154.415. PROHIBITION ORDER. (a) The commissioner may prohibit a person from participating in the business of prepaid funeral benefits sales if the 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 154.401;

(B) violated a final cease and desist order issued by the department or another state agency related to the sale of prepaid funeral benefits; or

(C) made, or caused to be made, false entries in the records of a prepaid funeral benefits seller;

(2) because of the action by the person described by

Subdivision (1):

(A) the purchaser or seller of prepaid funeral benefits has suffered or will probably suffer financial loss or expense, or other damage;

(B) the interests of the purchaser 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 involves personal dishonesty on the part of the person.

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

(1) be personally delivered or mailed by registered or certified mail, return receipt requested;

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

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

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

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

(d) 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. If the person does not request a hearing before the effective date, the order is final and not appealable as to that person.

(e) If the person requests a hearing as provided by Subsection (d), the hearing must be conducted as provided by Chapter 2001, Government Code, and commission rules. After the hearing, the 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.

(f) An order issued under Subsection (e) 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 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 13, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 20, eff. September 1, 2019.

Sec. 154.416. APPLICATION FOR RELEASE FROM PROHIBITION ORDER. (a) After the expiration of 10 years from the date of issuance, a person who is subject to a prohibition order issued under Section 154.415, regardless of the order's stated duration or date of issuance, may apply to the commissioner to be released from the order.

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

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

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 13, eff. September 1, 2013.

CHAPTER 155. BOND INVESTMENT COMPANIES

Sec. 155.001. DEFINITION. In this chapter, "bond investment company" includes a person that places or sells bonds, certificates, or debentures on the partial payment or installment plan.

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

Sec. 155.002. DEPOSIT REQUIRED. (a) Each person doing business in this state as a bond investment company shall deposit with the comptroller, in cash or securities approved by the comptroller, an amount equal to $5,000.

(b) In addition to the deposit required by Subsection (a), a

person doing business in this state as a bond investment company shall deposit semiannually with the comptroller, in cash or securities approved by the comptroller, an amount equal to 10 percent of all net premiums received by the company until the amount deposited equals $100,000.

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

Sec. 155.003. FAILURE TO MAKE DEPOSIT. (a) A domestic corporation that fails to make the deposit required by this chapter before the 61st day after the date of its organization is considered to have forfeited its charter or certificate of incorporation.

(b) The attorney general shall bring suit in the name of the state to have the charter or certificate of incorporation of a domestic corporation that fails to make a deposit as required by Subsection (a) declared forfeited.

(c) On a finding that a domestic corporation failed to make a deposit as required by Subsection (a), a court in which a proceeding is brought under Subsection (b) shall:

(1) declare the charter or certificate of incorporation of the corporation forfeited;

(2) appoint a receiver for the corporation; and

(3) make equitable compensation for the receiver out of the assets of the corporation.

(d) A receiver appointed under Subsection (c)(2) shall, under the order of the court, distribute to the shareholders the assets of the corporation.

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

Sec. 155.004. RECEIVER ON FAILURE OF CORPORATION. (a) If a corporation that does business in this state as a bond investment company fails, a district court of the county in which the principal office of the corporation is located shall appoint, on application of a shareholder of the corporation, a receiver.

(b) A receiver appointed under Subsection (a) shall:

(1) wind up the affairs of the corporation;

(2) liquidate the debts of the corporation; and

(3) distribute any remaining assets of the corporation,

including, if ordered by the court, the deposit made under this chapter to secure the shareholders.

(c) The comptroller may refund a deposit made under this chapter on application of the receiver approved by the court.

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

Sec. 155.005. EXCHANGE OF DEPOSIT. (a) On request, the comptroller may allow a bond investment company that has made a deposit under this chapter to alter the composition of the deposit by exchanging cash for securities or securities for cash.

(b) Securities deposited under this section must be approved by the comptroller on the written advice of the attorney general.

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

Sec. 155.006. RETURN OF DEPOSIT. The comptroller shall return a deposit of cash or securities made under this chapter to a bond investment company if:

(1) the company ceases to do business in this state; and

(2) the comptroller and the attorney general find that the company does not have any liabilities in this state.

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

Sec. 155.007. CRIMINAL PENALTY. (a) An officer or agent of a domestic or foreign corporation or company doing business in this state as a bond investment company commits an offense if:

(1) the officer or agent attempts to:

(A) place or sell shares; or

(B) transact any business on behalf of the company; and

(2) the bond investment company has not complied with the deposit requirements of this chapter.

(b) An offense under this section is punishable by:

(1) confinement in jail for a term of not more than six months or less than 30 days;

(2) a fine of not more than $1,000 or less than $100; or

(3) both the fine and confinement.

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

CHAPTER 156. RESIDENTIAL MORTGAGE LOAN COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 156.001. SHORT TITLE. This chapter may be cited as the Residential Mortgage Loan Company Licensing and Registration Act.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 4, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 2, eff. September 1, 2013.

Sec. 156.002. DEFINITIONS. In this chapter:

(1) "Auxiliary mortgage loan activity company" means a political subdivision of this state or the federal government doing business for consumers in this state, or an organization that qualifies for an exemption from state franchise and sales and use tax as a 501(c)(3) organization, that is involved in affordable home ownership lending programs.

(1-a) "Commissioner" means the savings and mortgage lending commissioner.

(1-b) "Credit union subsidiary organization" has the meaning assigned by Section 180.002.

(1-c) "Department" means the Department of Savings and Mortgage Lending.

(2) "Disciplinary action" means an order by the commissioner that requires one or more of the following:

(A) suspension or revocation of a license or registration under this chapter;

(B) probation of a suspension or revocation of a license or registration under this chapter on terms and conditions that the commissioner determines appropriate;

(C) a reprimand of a person licensed or registered under this chapter; or

(D) an administrative penalty imposed on a person

licensed or registered under this chapter under Section 156.302.

(3) "Finance commission" means the Finance Commission of Texas.

(4) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(1), eff. September 1, 2011.

(4-a) "Independent contractor loan processor or underwriter company" means a corporation, company, partnership, or sole proprietorship that receives compensation for an individual performing clerical or support duties as an independent contractor loan processor or underwriter at the direction of a licensed residential mortgage loan originator.

(4-b) "Inspection" includes examination.

(5) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(1), eff. September 1, 2011.

(6) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(1), eff. September 1, 2011.

(6-a) "Loan processor or underwriter" has the meaning assigned by Section 180.002.

(7) "Mortgage applicant" means:

(A) an applicant for a residential mortgage loan; or

(B) a person who is solicited to obtain a residential mortgage loan.

(8) "Mortgage banker" has the meaning assigned by Section 157.002.

(8-a) "Mortgage company" means a corporation, company, partnership, or sole proprietorship that engages in the business of residential mortgage loan origination on residential real estate located in this state.

(9) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(1), eff. September 1, 2011.

(10) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(1), eff. September 1, 2011.

(10-a) "Nationwide Mortgage Licensing System and Registry" has the meaning assigned by Section 180.002.

(10-b) "Qualifying individual" means an individual who is:

(A) licensed under Chapter 157 as a residential mortgage loan originator; and

(B) designated by a residential mortgage loan company as the company's representative.

(10-c) "Recovery fund" means the fund established and

maintained by the commissioner under Subchapter F and Section 13.016.

(11) "Registered financial services company" means a person registered under Section 156.2012.

(12) "Residential mortgage loan" has the meaning assigned by Section 180.002.

(13) "Residential mortgage loan company" means a person, other than an individual, that engages in the business of residential mortgage loan origination on residential real estate located in this state. The term includes a credit union subsidiary organization, auxiliary mortgage loan activity company, mortgage company, independent contractor loan processor or underwriter company, and financial services company.

(14) "Residential mortgage loan originator" has the meaning assigned by Section 180.002.

(15) "Residential real estate" has the meaning assigned by Section 180.002.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 228 (H.B. 1716), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 905 (H.B. 2783), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.052, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 65(a)(1), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 3, eff. September 1, 2013.

Sec. 156.003. SECONDARY MARKET TRANSACTIONS. This chapter does not prohibit a residential mortgage loan originator sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter from receiving compensation from a party other than the mortgage applicant for the sale, transfer, assignment, or release of rights on the closing of a mortgage transaction.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 6, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 4, eff. September 1, 2013.

Sec. 156.004. DISCLOSURE TO APPLICANT. (a) At the time an applicant submits an application to a residential mortgage loan originator sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter, the residential mortgage loan originator shall provide to the applicant a disclosure that specifies:

(1) the nature of the relationship between the applicant and the residential mortgage loan originator;

(2) the duties the residential mortgage loan originator has to the applicant; and

(3) how the residential mortgage loan originator will be compensated.

(b) The finance commission, by rule, shall adopt a standard disclosure form to be used by the residential mortgage loan originator.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 867, Sec. 85, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 7, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 5, eff. September 1, 2013.

Sec. 156.005. AFFILIATED BUSINESS ARRANGEMENTS. Unless prohibited by federal or state law, this chapter may not be construed to prevent affiliated or controlled business arrangements or loan origination services by or between residential mortgage loan originators, sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter, and

other professionals if the residential mortgage loan originator complies with all applicable federal and state laws permitting those arrangements or services.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 6.01, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 8, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 6, eff. September 1, 2013.

SUBCHAPTER B. ADMINISTRATION PROVISIONS

Sec. 156.101. ADMINISTRATION AND ENFORCEMENT OF CHAPTER; PARTICIPATION IN NATIONWIDE REGISTRY. (a) The commissioner shall administer and enforce this chapter.

(a-1) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(3), eff. September 1, 2013.

(a-2) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(3), eff. September 1, 2013.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1317, Sec. 28(i), eff. September 1, 2009.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1317, Sec. 28(i), eff. September 1, 2009.

(d) The commissioner shall participate in the Nationwide Mortgage Licensing System and Registry as provided by Chapter 180.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 4, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 1, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(g), eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 28(i), eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 7, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 8, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 87(3), eff. September 1, 2013.

Sec. 156.102. RULEMAKING AUTHORITY. (a) The finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with this chapter.

(a-1) The finance commission may adopt rules under this chapter as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(5), eff. September 1, 2013.

(b-1) The finance commission on the commissioner's recommendation may adopt rules to promote a fair and orderly administration of the recovery fund consistent with the purposes of Subchapter F.

(c) The finance commission may adopt rules regarding books and records that a person licensed under this chapter is required to keep, including the location at which the books and records must be kept.

(d) The finance commission shall consult with the commissioner when proposing and adopting rules under this chapter.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 867, Sec. 86, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 6.02, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 5, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 9, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 9, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 87(5), eff. September 1, 2013.

Sec. 156.103. POWERS OF COMMISSIONER. (a) In addition to any other action, proceeding, or remedy authorized by law, the commissioner may institute an action in the commissioner's name to enjoin a violation of this chapter or a rule adopted under this chapter. To sustain an action filed under this subsection, it is not necessary to allege or prove that an adequate remedy at law does not exist or that substantial or irreparable damage would result from a continued violation of this chapter.

(b) The commissioner is not required to provide an appeal bond in any action or proceeding to enforce this chapter.

(c) The commissioner may authorize specific employees to conduct hearings and make recommendations for final decisions in contested cases.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.104. MORTGAGE INDUSTRY ADVISORY COMMITTEE. (a) The mortgage industry advisory committee is created to advise and assist the commissioner.

(b) The advisory committee is composed of six members appointed by the commissioner. Each of the members must be:

(1) under the regulatory authority of the department;

(2) actively engaged in the business of originating, brokering, or funding residential mortgage loans at the time of appointment; and

(3) primarily engaged in the business of originating, brokering, or funding residential mortgage loans for at least two years before the member's appointment.

(b-1) The members of the committee must include six individuals licensed by the department as residential mortgage loan originators, two of whom must hold an active real estate broker or salesperson license issued under Chapter 1101, Occupations Code.

(c) Appointments to the advisory committee shall be made without regard to the sex, race, color, age, disability, religion, or national origin of the appointees.

(d) The members of the advisory committee serve for a staggered three-year term, with the terms of two members expiring February 1 of each year.

(e) The advisory committee shall meet at least twice a year at the call of the commissioner.

(f) The commissioner may remove a member of the advisory committee if:

(1) the member does not maintain the qualifications required by Subsection (b); or

(2) the commissioner determines that the member cannot discharge the member's duties for a substantial part of the term for which the member is appointed.

(g) In the event of a vacancy during a term, the appointing entity or official shall fill the vacancy for the unexpired part of the term with a person who meets the qualifications of the vacated position.

(h) In addition to other powers and duties delegated to the advisory committee by the commissioner, the advisory committee shall advise the commissioner with respect to:

(1) the proposal and adoption of rules relating to the mortgage industry;

(2) the form of or format for any applications or other documents under this chapter or Chapter 157; and

(3) the interpretation, implementation, and enforcement of this chapter and Chapter 157.

(i) Each member of the advisory committee is entitled to a per diem allowance and to reimbursement of travel expenses necessarily incurred in performing functions as a member of the committee, subject to any applicable limitation in the General Appropriations Act.

(j) The advisory committee shall take a record vote on any matter described by Subsection (h)(1). The commissioner shall inform the finance commission of:

(1) the result of the vote; and

(2) any additional information the commissioner considers necessary to ensure the finance commission is sufficiently notified of the advisory committee's recommendations.

(k) A record vote taken by the advisory committee under Subsection (j) is only a recommendation and does not supersede the rulemaking authority of the finance commission under this subchapter.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 867, Sec. 87, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 6.03, eff. September 1, 2005.
Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 3, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 4, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 5, eff. April 1, 2010.
Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 10, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 10, eff. September 1, 2013.

Sec. 156.105. STANDARD FORMS. (a) The finance commission by rule shall adopt one or more standard forms for use by a residential mortgage loan originator sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter in representing that an applicant for a residential mortgage loan is preapproved or has prequalified for the loan.

(b) The finance commission shall adopt rules requiring a residential mortgage loan originator licensed under Chapter 157 to use the forms adopted by the finance commission under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 407, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 11, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 11, eff. September 1, 2013.

SUBCHAPTER C. RESIDENTIAL MORTGAGE LOAN COMPANY LICENSES AND REGISTRATION

Sec. 156.201. LICENSES REQUIRED. (a) A person may not act in the capacity of, engage in the business of, or advertise or hold that

person out as engaging in or conducting the business of a residential mortgage loan company in this state unless the person holds an active residential mortgage loan company license, is registered under Section 156.2012, or is exempt under Section 156.202.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(4), eff. September 1, 2013.

(b-1) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(4), eff. September 1, 2013.

(b-2) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(4), eff. September 1, 2013.

(c) Each residential mortgage loan company and the company's qualifying individual licensed under Chapter 157 is responsible to the commissioner and members of the public for any act or conduct performed by the residential mortgage loan originator sponsored by or acting for the residential mortgage loan company in connection with:

(1) the origination of a residential mortgage loan; or

(2) a transaction that is related to the origination of a residential mortgage loan in which the qualifying individual knew or should have known of the transaction.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 6.04, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 905 (H.B. 2783), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 13, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 13, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 87(4), eff. September 1, 2013.

Sec. 156.2012. REGISTERED FINANCIAL SERVICES COMPANY. (a) A financial services company may perform the services of a residential mortgage loan company if the company is registered under this chapter.

(b) To be eligible to register as a registered financial services company, a person must:

(1) be a depository institution exempt from this chapter under Section 156.202(a-1)(4)(A) and chartered and regulated by the Office of the Comptroller of the Currency, or be a subsidiary of the institution;

(2) provide a business plan satisfactory to the commissioner that sets forth the person's plan to:

(A) provide education to its sponsored residential mortgage loan originators;

(B) handle consumer complaints relating to its sponsored residential mortgage loan originators; and

(C) supervise the residential mortgage loan origination activities of its sponsored residential mortgage loan originators;

(3) pay a registration fee in an amount not to exceed $500;

(4) designate an officer of the person to be responsible for the activities of its sponsored residential mortgage loan originators;

(5) submit a completed application through the Nationwide Mortgage Licensing System and Registry together with the applicable fee required by Subdivision (3) or Subsection (c);

(6) obtain preapproval from the commissioner that the person meets the eligibility requirements for registration as a financial services company; and

(7) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant.

(c) If the commissioner determines that a person has met the requirements of Subsection (b), the commissioner shall issue a registration to the person. The registration is valid for one year, expires on December 31 of each year, and must be renewed annually by meeting the requirements under Subsection (b) and paying a renewal fee in an amount not to exceed $500. A person must renew an expired registration in the manner determined by the commissioner.

(d) A registered financial services company is subject to Subchapters D and E as if the company were licensed as a residential mortgage loan company.

Added by Acts 2007, 80th Leg., R.S., Ch. 228 (H.B. 1716), Sec. 3, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 7, eff. June

19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 14, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 29, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 65(a)(9), eff. September 1, 2011.

Redesignated and amended from Finance Code, Section 156.214 by Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 32, eff. September 1, 2013.

Sec. 156.202. EXEMPTIONS. (a) In this section, "depository institution," "dwelling," and "federal banking agency" have the meanings assigned by Section 180.002.

(a-1) The following entities are exempt from this chapter:

(1) a nonprofit organization:

(A) providing self-help housing that originates zero interest residential mortgage loans for borrowers who have provided part of the labor to construct the dwelling securing the loan; or

(B) that has designation as a Section 501(c)(3) organization by the Internal Revenue Service and originates residential mortgage loans for borrowers who, through a self-help program, have provided at least 200 labor hours or 65 percent of the labor to construct the dwelling securing the loan;

(2) a mortgage banker registered under Chapter 157;

(3) any owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured; and

(4) an entity that is:

(A) a depository institution;

(B) a subsidiary of a depository institution that is:

(i) owned and controlled by the depository institution; and

(ii) regulated by a federal banking agency; or

(C) an institution regulated by the Farm Credit Administration.

(a-2) A person is not required to obtain a license or

registration under this chapter to originate a loan subject to Chapter 342 or a loan governed by Section 50(a)(6), Article XVI, Texas Constitution, if the person:

(1) is enrolled in the Nationwide Mortgage Licensing System and Registry;

(2) is licensed under Chapter 342; and

(3) makes consumer loans subject to:

(A) Subchapter G, Chapter 342; and

(B) Subchapter E or F, Chapter 342.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(4), eff. September 1, 2011.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(5), eff. September 1, 2013.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 5, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 135, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 6.05, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 228 (H.B. 1716), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 905 (H.B. 2783), Sec. 4, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 6, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 14, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 65(a)(4), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 14, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 87(5), eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 258 (S.B. 1203), Sec. 1, eff. September 1, 2015.

Sec. 156.203. APPLICATION; FEES. (a) For purposes of this section, an application for a residential mortgage loan company

license means an application for:

(1) a mortgage company license;

(2) a credit union subsidiary organization license;

(3) an auxiliary mortgage loan activity company license; or

(4) an independent contractor loan processor or underwriter company license.

(a-1) An application for a residential mortgage loan company license must be:

(1) in writing;

(2) under oath; and

(3) on the form prescribed by the commissioner.

(a-2) An application for a financial services company registration under Section 156.2012 must be:

(1) in writing;

(2) under oath; and

(3) on the form prescribed by the commissioner.

(b) An application for a residential mortgage loan company license must be accompanied by an application fee in an amount determined by the commissioner not to exceed $375.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(5), eff. September 1, 2013.

(d) An application fee under this section is not refundable and may not be credited or applied to any other fee or indebtedness owed by the person paying the fee.

(e) In addition to the disciplinary action by the commissioner authorized under Section 156.303(a)(7), the commissioner may collect a fee in an amount not to exceed $50 for any returned check or credit card charge back.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 6.06, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 7, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 15, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 15, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 16, eff.

September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 87(5), eff. September 1, 2013.

Sec. 156.2041. QUALIFICATIONS AND REQUIREMENTS FOR LICENSE: MORTGAGE COMPANY. (a) To be issued a mortgage company license, an applicant must:

(1) submit a completed application together with the payment of applicable fees through the Nationwide Mortgage Licensing System and Registry;

(2) designate control persons for the mortgage company through the Nationwide Mortgage Licensing System and Registry;

(3) designate an individual licensed as a residential mortgage loan originator under Chapter 157 as the company's qualifying individual;

(4) submit a completed branch application through the Nationwide Mortgage Licensing System and Registry for each branch office that engages in residential mortgage loan activity on residential real estate located in this state;

(5) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant;

(6) have the company name or assumed name properly filed with either the secretary of state or with the appropriate county clerk's office;

(7) maintain a physical office in this state; and

(8) provide financial statements and any other information required by the commissioner.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(5), eff. September 1, 2013.

Added by Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 16, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 17, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 18, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 87(5), eff.

September 1, 2013.

Sec. 156.2042. QUALIFICATIONS AND REQUIREMENTS FOR LICENSE: CREDIT UNION SUBSIDIARY ORGANIZATION. (a) To be issued a credit union subsidiary organization license, an applicant must:

(1) submit a completed application together with the payment of applicable fees through the Nationwide Mortgage Licensing System and Registry;

(2) designate control persons for the organization through the Nationwide Mortgage Licensing System and Registry;

(3) designate an individual licensed as a residential mortgage loan originator under Chapter 157 as the company's qualifying individual;

(4) submit a completed branch application through the Nationwide Mortgage Licensing System and Registry for each branch office that engages in residential mortgage loan activity on residential real estate located in this state;

(5) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant; and

(6) maintain a physical office in this state.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(5), eff. September 1, 2013.

Added by Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 16, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 19, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 20, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 87(5), eff. September 1, 2013.

Sec. 156.2043. QUALIFICATIONS AND REQUIREMENTS FOR LICENSE: AUXILIARY MORTGAGE LOAN ACTIVITY COMPANY. (a) To be issued an auxiliary mortgage loan activity company license, an applicant must:

(1) submit a completed application together with the

payment of applicable fees through the Nationwide Mortgage Licensing System and Registry;

(2) designate control persons for the company through the Nationwide Mortgage Licensing System and Registry;

(3) designate an individual licensed as a residential mortgage loan originator under Chapter 157 as the company's qualifying individual; and

(4) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(5), eff. September 1, 2013.

Added by Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 16, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 21, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 22, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 87(5), eff. September 1, 2013.

Sec. 156.2044. QUALIFICATIONS AND REQUIREMENTS FOR LICENSE: INDEPENDENT CONTRACTOR LOAN PROCESSOR OR UNDERWRITER COMPANY. (a) To be issued an independent contractor loan processor or underwriter company license under this chapter, an applicant must:

(1) submit a completed application together with the payment of applicable fees through the Nationwide Mortgage Licensing System and Registry;

(2) designate control persons for the company through the Nationwide Mortgage Licensing System and Registry;

(3) designate an individual licensed as a residential mortgage loan originator under Chapter 157 as the company's qualifying individual; and

(4) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant.

(b) An independent contractor loan processor or underwriter

company or a sponsored residential mortgage loan originator is not authorized to originate residential mortgage loans with a license issued under Subsection (a).

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(5), eff. September 1, 2013.

Added by Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 16, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 23, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 24, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 87(5), eff. September 1, 2013.

Sec. 156.2046. CONVICTION OF OFFENSE. A person is considered to have been convicted of a criminal offense if:

(1) a sentence is imposed on the person;

(2) the person received probation or community supervision, including deferred adjudication or community service; or

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 16, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 25, eff. September 1, 2013.

Sec. 156.206. CRIMINAL AND OTHER BACKGROUND CHECKS. (a) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(5), eff. September 1, 2013.

(b) The commissioner shall conduct criminal background and credit history checks on a person required to be licensed under this chapter.

(c) The commissioner shall keep confidential any background information obtained under this section and may not release or disclose the information unless:

(1) the information is a public record at the time the commissioner obtains the information; or

(2) the commissioner releases the information:

(A) under order from a court; or

(B) to a governmental agency.

(d) Notwithstanding Subsection (c), criminal history record information obtained from the Federal Bureau of Investigation may be released or disclosed only to a governmental entity or as authorized by federal statute, federal rule, or federal executive order.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 337, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 407, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 867, Sec. 88, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 173, Sec. 1, 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 296, Sec. 11, 12, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 18, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 19, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 26, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 87(5), eff. September 1, 2013.

Sec. 156.207. ISSUANCE OF LICENSE. (a) The commissioner shall issue a license to an applicant for a residential mortgage loan company license if the commissioner finds that the applicant meets all requirements and conditions for the license.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(5), eff. September 1, 2013.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(5), eff. September 1, 2013.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(5), eff. September 1, 2013.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 337, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 867, Sec. 89, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 21, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 27, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 87(5), eff. September 1, 2013.

Sec. 156.208. RENEWALS.

(a-1) A residential mortgage loan company license issued under this chapter is valid through December 31 of the year of issuance and may be renewed on or before its expiration date if the residential mortgage loan company:

(1) pays to the commissioner a renewal fee in an amount determined by the commissioner not to exceed $375;

(2) has not shown a pattern or practice of abusive mortgage activity and has no civil judgments or liens that, in the commissioner's opinion, directly impact the ability of the residential mortgage loan company to conduct business while safeguarding and protecting the public interest; and

(3) continues to meet the minimum requirements for license issuance.

(b-1) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(6), eff. September 1, 2013.

(b-2) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(6), eff. September 1, 2013.

(c) An application for renewal shall be in the form prescribed by the commissioner.

(d) On receipt of a request for a renewal of a license issued under this subchapter, the commissioner may conduct a criminal background check under Section 156.206.

(e) A renewal fee is not refundable and may not be credited or applied to any other fee or indebtedness owed by the person paying the fee.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(7), eff. September 1, 2011.

(g) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(7), eff. September 1, 2011.

(h) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(7), eff. September 1, 2011.

(i) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(7), eff. September 1, 2011.

(j) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(6), eff. September 1, 2013.

(k) In addition to the disciplinary action by the commissioner authorized under Section 156.303(a)(7), the commissioner may collect a fee in an amount not to exceed $50 for any returned check or credit card charge back.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 90, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.747, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 170, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 859 (S.B. 988), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 6.09, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 905 (H.B. 2783), Sec. 7, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 11, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 12, eff. January 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 22, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 65(a)(7), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 28, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 87(6), eff. September 1, 2013.

Sec. 156.2081. REINSTATEMENT AFTER EXPIRATION. (a) A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person who is otherwise eligible to renew a license, but

has not done so before January 1, may renew the license before March 1 by paying the commissioner a reinstatement fee in an amount equal to 150 percent of the required renewal fee.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(5), eff. September 1, 2013.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(8), eff. September 1, 2011.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(8), eff. September 1, 2011.

Added by Acts 2001, 77th Leg., ch. 337, Sec. 8, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 6.10, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 23, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 24, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 65(a)(8), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 87(5), eff. September 1, 2013.

Sec. 156.209. DENIAL OF APPLICATIONS AND RENEWALS. (a) If the commissioner declines or fails to issue or renew a license, the commissioner shall promptly give written notice to the applicant or the person requesting the renewal that the application or renewal, as appropriate, was denied.

(b) Before the applicant or person requesting the renewal may appeal to a district court as provided by Section 156.401, the applicant or person must file with the commissioner, not later than the 10th day after the date on which notice under Subsection (a) is received, an appeal of the ruling requesting a time and place for a hearing before a hearings officer designated by the commissioner.

(c) The designated hearings officer shall set the time and place for a hearing requested under Subsection (b) not later than the 90th day after the date on which the appeal is received. The hearings officer shall provide at least 10 days' notice of the hearing to the applicant or person requesting the renewal. The time

of the hearing may be continued periodically with the consent of the applicant or person requesting the renewal. After the hearing, the commissioner shall enter an order from the findings of fact, conclusions of law, and recommendations of the hearings officer.

(d) If an applicant or person requesting the renewal fails to request a hearing under this section, the commissioner's refusal to issue or renew a license is final and may not be subject to review by the courts.

(e) A hearing held under this section is governed by Chapter 2001, Government Code. An appeal of a final order issued under this section may be made in accordance with Section 156.401.

(f) A person who requests a hearing under this section shall be required to pay a deposit to secure the payment of the costs of the hearing in an amount to be determined by the commissioner not to exceed $500. The entire deposit shall be refunded to the person if the person prevails in the contested case hearing. If the person does not prevail, any portion of the deposit in excess of the costs of the hearing assessed against that person shall be refundable.

(g) A person whose application for or request to renew a license has been denied is not eligible to be licensed for a period of two years after the date the denial becomes final, or a shorter period as determined by the commissioner after evaluating the specific circumstances of the denial. The finance commission may adopt rules to provide conditions for which the commissioner may shorten the period of ineligibility.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 6.11, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 29, eff. September 1, 2013.

Sec. 156.210. CONDITIONAL LICENSE. The commissioner may issue a conditional license. The finance commission by rule shall adopt reasonable terms and conditions for a conditional license.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 867, Sec. 91, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 25, eff. September 1, 2011.

Sec. 156.211. CHANGE OF ADDRESS OR SPONSORSHIP; MODIFICATION OF LICENSE. (a) Before the 10th day preceding the effective date of an address change, a residential mortgage loan company shall notify the commissioner in writing of the new address accompanied by a change of address fee of $25.

(b) When the sponsorship of a residential mortgage loan originator is terminated, the residential mortgage loan originator or the residential mortgage loan company shall immediately notify the commissioner.

(b-1) Not later than the 10th day before a residential mortgage loan company begins doing business under an assumed name, the residential mortgage loan company shall file with the commissioner a copy of an assumed name certificate for each assumed name under which the residential mortgage loan company intends to conduct business and pay a $25 registration fee for each assumed name.

(b-2) A person licensed under this chapter must notify the commissioner not later than the 10th day after the date of any change of the person's name for the issuance of an amended license.

(b-3) A residential mortgage loan company licensed under this chapter that changes the company's qualifying individual shall notify the commissioner not later than the 10th business day after the date of the change. The commissioner may charge a fee of $25 for each change of a designated representative.

(c) A fee under this section is not refundable and may not be credited or applied to any other fee or indebtedness owed by the person paying the fee.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 6.12, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 905 (H.B. 2783), Sec. 8, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 26, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 30, eff. September 1, 2013.

Sec. 156.212. MAINTENANCE AND LOCATION OF OFFICES. (a) Each residential mortgage loan company licensed under this chapter shall maintain a physical office in this state.

(a-1) If a residential mortgage loan company's main office is outside this state, the requirement of Subsection (a) is satisfied if the company has a branch office located in this state.

(b) If a residential mortgage loan company maintains an office separate and distinct from the company's main office, whether located in this state or not, that conducts mortgage business with consumers of this state or regarding residential real estate in this state, the company shall apply for, pay a fee of $50 for, and obtain an additional license to be known as a branch office license for each additional office to be maintained by the company.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 29, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 27, eff. September 1, 2011.

Sec. 156.213. MORTGAGE CALL REPORT. (a) Each licensed residential mortgage loan company shall file a mortgage call report with the commissioner or the commissioner's authorized designee on a form prescribed by the commissioner or authorized designee. The report:

(1) is a statement of condition of the residential mortgage loan company and the company's operations, including financial statements and production activity volumes;

(2) must include any other information required by the commissioner; and

(3) must be filed as frequently as required by the commissioner.

(b) Information contained in the mortgage call report related to residential mortgage loan origination volume or other trade

information, including information used to determine statistical entries in the report related to loan origination volume, is confidential and may not be disclosed by the commissioner, the commissioner's authorized designee, or any other employee of the department.

Added by Acts 2001, 77th Leg., ch. 337, Sec. 9, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 28, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 31, eff. September 1, 2013.

SUBCHAPTER D. LICENSE REVOCATION AND SUSPENSION AND OTHER ACTIONS AGAINST LICENSE HOLDER

Sec. 156.301. INSPECTIONS; INVESTIGATIONS. (a) The commissioner may conduct inspections of a person licensed under this chapter or a residential mortgage loan originator who is licensed under Chapter 157 and sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter as the commissioner determines necessary to determine whether the person or the residential mortgage loan originator is complying with this chapter and applicable rules. The inspections may include inspection of the books, records, documents, operations, and facilities of the person or the residential mortgage loan originator and access to any documents required under rules adopted under this chapter. The commissioner may share evidence of criminal activity gathered during an inspection or investigation with any state or federal law enforcement agency.

(b) On the signed written complaint of a person, the commissioner shall investigate the actions and records of a person licensed under this chapter or a residential mortgage loan originator who is licensed under Chapter 157 and sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter if the complaint, or the complaint and documentary or other evidence presented in connection with the complaint, provides reasonable cause. The commissioner, before commencing an investigation, shall notify the residential mortgage loan company or the residential mortgage loan originator in writing

of the complaint and that the commissioner intends to investigate the matter.

(c) For reasonable cause, the commissioner at any time may investigate a person licensed under this chapter or a residential mortgage loan originator who is licensed under Chapter 157 and sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter to determine whether the person or the residential mortgage loan originator is complying with this chapter and applicable rules.

(d) The commissioner may conduct an undercover or covert investigation only if the commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of this chapter.

(e) The finance commission by rule shall provide guidelines to govern an inspection or an investigation, including rules to:

(1) determine the information and records to which the commissioner may demand access during an inspection or an investigation; and

(2) establish what constitutes reasonable cause for an investigation.

(f) Information obtained by the commissioner during an inspection or an investigation is confidential unless disclosure of the information is permitted or required by other law.

(g) The commissioner may share information gathered during an investigation or inspection with any state or federal agency.

(h) The commissioner may require reimbursement of expenses for each examiner for on-site examination or investigation of a license holder if records are located out of state or if the review is considered necessary beyond the routine examination process. The finance commission by rule shall set the maximum amount for the reimbursement of expenses authorized under this subsection.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 337, Sec. 10, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 6.13, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 15, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 30, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 33, eff. September 1, 2013.

Sec. 156.3011. ISSUANCE AND ENFORCEMENT OF SUBPOENA. (a) During an investigation, the commissioner may issue a subpoena that is addressed to a peace officer of this state or other person authorized by law to serve citation or perfect service. The subpoena may require a person to give a deposition, produce documents, or both.

(b) If a person disobeys a subpoena or if a person appearing in a deposition in connection with the investigation refuses to testify, the commissioner may petition a district court in Travis County to issue an order requiring the person to obey the subpoena, testify, or produce documents relating to the matter. The court shall promptly set an application to enforce a subpoena issued under Subsection (a) for hearing and shall cause notice of the application and the hearing to be served upon the person to whom the subpoena is directed.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 6.14, eff. September 1, 2005.

Sec. 156.302. ADMINISTRATIVE PENALTY. (a) The commissioner, after notice and opportunity for hearing, may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) The amount of the penalty may not exceed $25,000 for each violation. The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm to property caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(c) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the

penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the commissioner to contest the affidavit as provided by those rules.

(d) The attorney general may sue to collect the penalty.

(e) An appeal of an administrative penalty under this section is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 337, Sec. 11, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 407, Sec. 4, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 16, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 31, eff. September 1, 2011.

Sec. 156.303. DISCIPLINARY ACTION; CEASE AND DESIST ORDER. (a) The commissioner may order disciplinary action against a licensed or registered residential mortgage loan company when the commissioner, after notice and opportunity for hearing, has determined that the company:

(1) obtained a license or registration, including a renewal of a license or registration, under this chapter through a false or fraudulent representation or made a material misrepresentation in an application for a license or registration or for the renewal of a license or registration under this chapter;

(2) published or caused to be published an advertisement related to the business of a residential mortgage loan company that:

(A) is misleading;

(B) is likely to deceive the public;

(C) in any manner tends to create a misleading impression;

(D) fails to identify as a residential mortgage loan company the person causing the advertisement to be published; or

(E) violates federal or state law;

(3) while performing an act for which a license or registration under this chapter is required, engaged in conduct that constitutes improper, fraudulent, or dishonest dealings;

(4) entered a plea of guilty or nolo contendere to, or is convicted of, a criminal offense that is a felony or that involves fraud or moral turpitude in a court of this or another state or in a federal court;

(5) failed to use a fee collected in advance of closing of a residential mortgage loan for a purpose for which the fee was paid;

(6) charged or received, directly or indirectly, a fee for assisting a mortgage applicant in obtaining a residential mortgage loan before all of the services that the person agreed to perform for the mortgage applicant are completed, and the proceeds of the residential mortgage loan have been disbursed to or on behalf of the mortgage applicant;

(7) failed within a reasonable time to honor a credit card charge back or a check issued to the commissioner after the commissioner has mailed a request for payment, including payment of any applicable fees, to the person's last known business address as reflected by the commissioner's records;

(8) paid compensation to a person who is not licensed, registered, or exempt under this chapter or Chapter 157 for acts for which a license or registration under this chapter or Chapter 157 is required;

(9) induced or attempted to induce a party to a contract to breach the contract so the person may make a residential mortgage loan;

(10) published or circulated an unjustified or unwarranted threat of legal proceedings in matters related to the person's actions or services as a residential mortgage loan company;

(11) established an association, by employment or otherwise, with a person not licensed, registered, or exempt under this chapter or Chapter 157 who was expected or required to act as a residential mortgage loan company or residential mortgage loan originator;

(12) aided, abetted, or conspired with a person to circumvent the requirements of this chapter or Subchapter D, Chapter 157;

(13) acted in the dual capacity of a residential mortgage

loan company and real estate broker, salesperson, or attorney in a transaction without the knowledge and written consent of the mortgage applicant or in violation of applicable requirements under federal law;

(14) discriminated against a prospective borrower on the basis of race, color, religion, sex, national origin, ancestry, familial status, or a disability;

(15) failed or refused on demand to:

(A) produce a document, book, or record concerning a residential mortgage loan transaction conducted by a residential mortgage loan originator for inspection by the commissioner or the commissioner's authorized personnel or representative;

(B) give the commissioner or the commissioner's authorized personnel or representative free access to the books or records relating to the person's business kept by an officer, agent, or employee of the person or any business entity through which the person conducts residential mortgage loan origination activities, including a subsidiary or holding company affiliate; or

(C) provide information requested by the commissioner as a result of a formal or informal complaint made to the commissioner;

(16) failed without just cause to surrender, on demand, a copy of a document or other instrument coming into the person's possession that was provided to the person by another person making the demand or that the person making the demand is under law entitled to receive;

(17) disregarded or violated this chapter, a rule adopted by the finance commission under this chapter, or an order issued by the commissioner under this chapter; or

(18) provided false information to the commissioner during the course of an investigation or inspection.

(a-1) The commissioner may also order disciplinary action after notice and opportunity for hearing against a licensed or registered residential mortgage loan company if the commissioner becomes aware during the term of the license of any fact that would have been grounds for denial of an original license if the fact had been known by the commissioner on the date the license was issued.

(b) In addition to disciplinary action by the commissioner authorized under Subsection (a), the commissioner, if the commissioner has reasonable cause to believe that a person licensed

under this chapter has or is about to violate this section, may issue without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter.

(c) An order issued under Subsection (b) must contain a reasonably detailed statement of the facts on which the order is made. If a person against whom the order is made requests a hearing, the commissioner shall set and give notice of a hearing before the commissioner or a hearings officer. The hearing shall be governed by Chapter 2001, Government Code. Based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the commissioner by order may find a violation has occurred or not occurred.

(d) If a hearing is not requested under Subsection (c) not later than the 30th day after the date on which an order is made, the order is considered final and not appealable.

(e) The commissioner, after giving notice and an opportunity for hearing, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed $1,000 for each day of the violation. In addition to any other remedy provided by law, the commissioner may institute in district court a suit for injunctive relief and to collect the administrative penalty. A bond is not required of the commissioner with respect to injunctive relief granted under this subsection.

(f) For purposes of Subsection (a), a person is considered convicted if a sentence is imposed on the person, the person receives community supervision, including deferred adjudication community supervision, or the court defers final disposition of the person's case.

(g) If a person fails to pay an administrative penalty that has become final or fails to comply with an order of the commissioner that has become final, in addition to any other remedy provided under law the commissioner, on not less than 10 days' notice to the person, may without a prior hearing suspend the person's residential mortgage loan company license or registration. The suspension shall continue until the person has complied with the order or paid the administrative penalty. During the period of suspension, the person may not originate a residential mortgage loan and all compensation received by the person during the period of suspension is subject to forfeiture as provided by Section 156.406(b).

(h) An order of suspension under Subsection (g) may be appealed. An appeal is a contested case governed by Chapter 2001, Government Code. A hearing of an appeal of an order of suspension issued under Subsection (g) shall be held not later than the 30th day after the date of receipt of the notice of appeal. The appellant shall be provided at least three days' notice of the time and place of the hearing.

(i) An order revoking the license or registration of a residential mortgage loan company may provide that the person is prohibited, without obtaining prior written consent of the commissioner, from:

(1) engaging in the business of originating or making residential mortgage loans; or

(2) otherwise affiliating with a person for the purpose of engaging in the business of originating or making residential mortgage loans.

(j) The commissioner may, on not less than 10 days' notice to the person, suspend a person's license without a prior hearing under this chapter if an indictment or information is filed or returned alleging that the person committed a criminal offense involving fraud, theft, or dishonesty. The suspension continues until the criminal case is dismissed or the person is acquitted. A person may appeal the suspension in accordance with Subsection (h).

(k) The commissioner may, at the commissioner's discretion, rescind or vacate any previously issued order.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 92, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 170, Sec. 3, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 6.15, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 905 (H.B. 2783), Sec. 10, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 17, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 32, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 34, eff. September 1, 2013.

Sec. 156.304. FEE ASSESSMENT AND DISCLOSURE. (a) Before the completion of all services to be performed, a residential mortgage loan originator sponsored by and conducting business for a licensed or registered residential mortgage loan company under this chapter may charge and receive, unless prohibited by law, the following fees for services in assisting a mortgage applicant to obtain a residential mortgage loan:

(1) a fee to obtain a credit report;

(2) a fee for the appraisal of the real estate;

(3) a fee for processing a residential mortgage loan application;

(4) a fee for taking a residential mortgage loan application;

(5) a fee for automated underwriting;

(6) a fee for a courier service;

(7) a fee to issue a loan commitment; or

(8) subject to Subsection (b), a fee for locking in an interest rate.

(b) A residential mortgage loan originator may not charge or receive a fee for locking in an interest rate unless there is a written agreement signed by the mortgage applicant and residential mortgage loan originator that contains a statement of whether the fee to lock in the interest rate is refundable and, if so, the terms and conditions necessary to obtain the refund.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 33, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 35, eff. September 1, 2013.

Sec. 156.305. RESTITUTION. The commissioner may order a person to make restitution for any amount received by that person in violation of this chapter. A residential mortgage loan company may be required to make restitution for any amount received by a sponsored residential mortgage loan originator in violation of

Chapter 157.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 6.16, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 34, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 36, eff. September 1, 2013.

SUBCHAPTER E. HEARINGS; JUDICIAL REVIEW; CIVIL ACTIONS; UNLICENSED ACTIVITY

Sec. 156.401. HEARINGS AND JUDICIAL REVIEW. (a) The commissioner may employ an enforcement staff to investigate and prosecute complaints made against persons licensed under this chapter. The commissioner may employ a hearings officer to conduct hearings under this section. The commissioner may collect and deposit any court costs collected pursuant to a final order.

(b) If the commissioner proposes to suspend or revoke a license issued under this chapter or if the commissioner refuses to issue or renew a license to an applicant for a license or person requesting a renewal of a license under this chapter, the applicant or license holder is entitled to a hearing before the commissioner or a hearings officer who shall make a proposal for decision to the commissioner. The commissioner or hearings officer shall prescribe the time and place of the hearing. The hearing is governed by Chapter 2001, Government Code.

(c) The commissioner or hearings officer may issue subpoenas for the attendance of witnesses and the production of records or documents. Process issued by the commissioner or hearings officer may extend to all parts of the state and may be served by any person designated by the commissioner or hearings officer.

(d) A person aggrieved by a ruling, order, or decision of the commissioner has the right to appeal to a district court in the county in which the hearing was held. An appeal under this subsection is governed by Chapter 2001, Government Code.

(e) The commissioner may, in the commissioner's discretion, rescind or vacate any previously issued revocation order.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 18, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 35, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 37, eff. September 1, 2013.

Sec. 156.402. CIVIL ACTIONS AND INJUNCTIVE RELIEF. (a) A mortgage applicant injured by a violation of this chapter may bring an action for recovery of actual monetary damages and reasonable attorney's fees and court costs.

(b) The commissioner, the attorney general, or a mortgage applicant may bring an action to enjoin a violation of this chapter.

(c) A remedy provided by this section is in addition to any other remedy provided by law.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.403. BURDEN OF PROOF TO ESTABLISH AN EXEMPTION. The burden of proving an exemption in a proceeding or action brought under this chapter is on the person claiming the benefit of the exemption.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.404. RELIANCE ON WRITTEN NOTICES FROM COMMISSIONER. A person does not violate this chapter with respect to an action taken or omission made in reliance on a written notice, written interpretation, or written report from the commissioner, unless a subsequent amendment to this chapter or a rule adopted under this chapter affects the commissioner's notice, interpretation, or report.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Sec. 156.406. UNLICENSED ACTIVITY. (a) A person, unless otherwise exempt, commits an offense if the person conducts regulated

activities under this chapter without first obtaining a license or registration as required by Section 156.201, 156.2012, or 157.012, as applicable. An offense under this subsection is a Class B misdemeanor. A second or subsequent conviction for an offense under this subsection shall be punished as a Class A misdemeanor.

(b) A person who received money, or the equivalent of money, as a fee or profit because of or in consequence of the person acting as a residential mortgage loan originator without an active license or being exempt under this chapter is liable for damages in an amount that is not less than the amount of the fee or profit received and not to exceed three times the amount of the fee or profit received, as may be determined by the court. An aggrieved person may recover damages under this subsection in a court.

(c) If the commissioner has reasonable cause to believe that a person who is not licensed or exempt under this chapter has engaged, or is about to engage, in an act or practice for which a license is required under this chapter, the commissioner may issue without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter. The order shall contain a reasonably detailed statement of the facts on which the order is made. The order may assess an administrative penalty in an amount not to exceed $1,000 per day for each violation and may require a person to pay to a mortgage applicant any compensation received by the person from the applicant in violation of this chapter. If a person against whom the order is made requests a hearing, the commissioner shall set and give notice of a hearing before the commissioner or a hearings officer. The hearing shall be governed by Chapter 2001, Government Code. An order under this subsection becomes final unless the person to whom the order is issued requests a hearing not later than the 30th day after the date the order is issued.

(d) If a hearing has not been requested under Subsection (c) not later than the 30th day after the date the order is made, the order is considered final and not appealable. The commissioner, after giving notice, may impose against a person who violates a cease and desist order, an administrative penalty in an amount not to exceed $1,000 for each day of a violation. In addition to any other remedy provided by law, the commissioner may institute in district court a suit for injunctive relief and to collect the administrative

penalty. A bond is not required of the commissioner with respect to injunctive relief granted under this section. A penalty collected under this subsection shall be deposited in the recovery fund.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 6.17, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 37, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 38, eff. September 1, 2013.

SUBCHAPTER F. RECOVERY FUND

Sec. 156.501. RECOVERY FUND. (a) The commissioner shall establish, administer, and maintain a recovery fund as provided by Section 13.016 and this subchapter. The amounts received by the commissioner for deposit in the fund shall be held by the commissioner in trust for carrying out the purposes of the fund.

(b) Subject to this subsection, the recovery fund shall be used to reimburse residential mortgage loan applicants for actual damages incurred because of acts committed by a residential mortgage loan originator who was licensed under Chapter 157 when the act was committed. The use of the fund is limited to reimbursement for out-of-pocket losses caused by an act by a residential mortgage loan originator licensed under Chapter 157 that constitutes a violation of Section 157.024(a)(2), (3), (5), (7), (8), (9), (10), (13), (16), (17), or (18) or 156.304(b).

(b-1) Payments from the recovery fund may not be made to a lender who makes a residential mortgage loan originated by the residential mortgage loan originator or who acquires a residential mortgage loan originated by the residential mortgage loan originator.

(c) Amounts in the recovery fund may be invested and reinvested in the same manner as funds of the Employees Retirement System of Texas, and the interest from these investments shall be deposited to the credit of the fund. An investment may not be made under this subsection if the investment will impair the necessary liquidity required to satisfy judgment payments awarded under this subchapter.

(d) The recovery fund may be used at the discretion of the

commissioner to reimburse expenses incurred to secure and destroy residential mortgage loan documents that have been abandoned by a current or former individual or entity under the regulatory authority of the department.

(e) Payments from the recovery fund shall be reduced by the amount of any recovery from the residential mortgage loan originator or from any surety, insurer, or other person or entity making restitution to the applicant on behalf of the residential mortgage loan originator.

(f) The commissioner, as manager of the recovery fund, is entitled to reimbursement for reasonable and necessary costs and expenses incurred in the management of the fund, including costs and expenses incurred with regard to applications filed under Section 156.504.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 6.18, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 19, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 38, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 40, eff. September 1, 2013.

Sec. 156.502. FUNDING. (a) On an application for an original license or for renewal of a license issued under Chapter 157, the applicant, in addition to paying the original application fee or renewal fee, shall pay a fee in an amount determined by the commissioner, not to exceed $20. The fee shall be deposited in the recovery fund.

(b) If the balance remaining in the recovery fund at the end of a calendar year is more than $3.5 million, the amount of money in excess of that amount shall be available to the commissioner to offset the expenses of participating in and sharing information with the Nationwide Mortgage Licensing System and Registry in accordance with Chapter 180.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 20, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 21, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 29, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 39, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 41, eff. September 1, 2013.

Sec. 156.503. STATUTE OF LIMITATIONS. (a) An application for the recovery of actual damages from the recovery fund under Section 156.504 may not be filed after the fourth anniversary of the date of the alleged act or omission causing the actual damages or the date the act or omission should reasonably have been discovered.

(b) This section does not apply to a subrogation claim brought by the commissioner for recovery of money paid out of the recovery fund.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 22, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 40, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 42, eff. September 1, 2013.

Sec. 156.504. PROCEDURE FOR RECOVERY. (a) To recover from the recovery fund, a residential mortgage loan applicant must file a written sworn application with the commissioner in the form prescribed by the commissioner, subject to Section 156.503. A person who knowingly makes a false statement in connection with applying for money out of the fund may be subject to criminal prosecution under Section 37.10, Penal Code.

(b) The residential mortgage loan applicant is required to

show:

(1) that the applicant's claim is based on facts allowing recovery under Section 156.501; and

(2) that the applicant:

(A) is not a spouse of the licensed residential mortgage loan originator;

(B) is not a child, parent, grandchild, grandparent, or sibling, including relationships by adoption, of the licensed residential mortgage loan originator;

(C) is not a person sharing living quarters with the licensed residential mortgage loan originator or a current or former employer, employee, or associate of the licensed residential mortgage loan originator;

(D) is not a person who has aided, abetted, or participated other than as a victim with the licensed residential mortgage loan originator in any activity that is illegal under Section 157.024(a)(2), (3), (5), (7), (8), (9), (10), (13), (16), (17), or (18) or 156.304(b), or is not the personal representative of a licensed residential mortgage loan originator; and

(E) is not licensed as a residential mortgage loan originator under Chapter 157 who is seeking to recover any compensation in the transaction or transactions for which the application for payment is made.

(c) On receipt of the verified application, the commissioner's staff shall:

(1) notify each appropriate license holder and the issuer of any surety bond issued in connection with their licenses; and

(2) investigate the application and issue a preliminary determination, giving the applicant, the license holder, and any surety an opportunity to resolve the matter by agreement or to dispute the preliminary determination.

(d) If the preliminary determination under Subsection (c)(2) is not otherwise resolved by agreement and is not disputed by written notice to the commissioner before the 31st day after the notification date, the preliminary determination automatically becomes final and the commissioner shall make payment from the recovery fund, subject to the limits of Section 156.505.

(e) If the preliminary determination under Subsection (c)(2) is disputed by the applicant, the license holder, or any surety by written notice to the commissioner before the 31st day after the

notification date, the matter shall be set for a hearing governed by Chapter 2001, Government Code, and the hearing rules of the finance commission.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 23, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 41, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 43, eff. September 1, 2013.

Sec. 156.505. RECOVERY LIMITS. (a) A person entitled to receive payment out of the recovery fund is entitled to receive reimbursement of actual, out-of-pocket damages as provided by this section.

(b) A payment from the recovery fund may be made as provided by Section 156.504 and this section. A payment for claims:

(1) arising out of the same transaction, including interest, is limited in the aggregate to $25,000, regardless of the number of claimants; and

(2) against a single person licensed as a residential mortgage loan originator under Chapter 157 arising out of separate transactions, including interest, is limited in the aggregate to $50,000 until the fund has been reimbursed for all amounts paid.

(c) In the event there are concurrent claims under Subsections (b)(1) and (2) that exceed the amounts available under the recovery fund, the commissioner shall prorate recovery based on the amount of damage suffered by each claimant.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 24, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 42, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 44, eff. September 1, 2013.

Sec. 156.506. REVOCATION OR SUSPENSION OF LICENSE FOR PAYMENT FROM RECOVERY FUND. (a) The commissioner may revoke or suspend a license issued under Chapter 157 on proof that the commissioner has made a payment from the recovery fund of any amount toward satisfaction of a claim against a residential mortgage loan originator under Chapter 157.

(a-1) The commissioner may seek to collect from a residential mortgage loan originator the amount paid from the recovery fund on behalf of the residential mortgage loan originator and any costs associated with investigating and processing the claim against the fund or with collection of reimbursement for payments from the recovery fund, plus interest at the current legal rate until the amount has been repaid in full. Any amount, including interest, recovered by the commissioner shall be deposited to the credit of the fund.

(b) The commissioner may probate an order revoking or suspending a license under this section.

(c) A person on whose behalf payment was made from the recovery fund is not eligible to receive a new license or have a suspension lifted under this chapter or Chapter 157 until the person has repaid in full, plus interest at the current legal rate, the amount paid from the fund on the person's behalf and any costs associated with investigating and processing the claim against the fund or with collection of reimbursement for payments from the fund.

(d) This section does not limit the authority of the commissioner to take disciplinary action against a residential mortgage loan originator for a violation of Chapter 157 or the rules adopted by the finance commission under that chapter. The repayment in full to the recovery fund of all obligations of a residential mortgage loan originator does not nullify or modify the effect of any other disciplinary proceeding brought under Chapter 157.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 867, Sec. 93, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 25, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 43, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 45, eff. September 1, 2013.

Sec. 156.507. SUBROGATION. When the commissioner has paid an applicant an amount from the recovery fund under Section 156.504, the commissioner is subrogated to all of the rights of the applicant to the extent of the amount paid. The applicant shall assign all of the applicant's right, title, and interest in any subsequent judgment against the license holder, up to the amount paid by the commissioner. Any amount, including interest, recovered by the commissioner on the assignment shall be deposited to the credit of the fund.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 26, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 44, eff. September 1, 2011.

Sec. 156.508. FAILURE TO COMPLY WITH SUBCHAPTER OR RULE ADOPTED BY THE FINANCE COMMISSION. The failure of an applicant under Section 156.504 to comply with a provision of this subchapter relating to the recovery fund or with a rule adopted by the finance commission relating to the fund constitutes a waiver of any rights under this subchapter.

Added by Acts 1999, 76th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1317 (H.B. 2774), Sec. 27, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 44, eff. September 1, 2011.

CHAPTER 157. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 157.001. SHORT TITLE. This chapter may be cited as the

Mortgage Banker Registration and Residential Mortgage Loan Originator License Act.

Added by Acts 2003, 78th Leg., ch. 1301, Sec. 1, eff. Jan. 1, 2004.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 1, eff. April 1, 2010.

Sec. 157.002. DEFINITIONS. In this chapter:

(1) "Commissioner" means the savings and mortgage lending commissioner.

(2) "Disciplinary action" means any order by the commissioner that requires one or more of the following:

(A) suspension or revocation of a residential mortgage loan originator license under this chapter;

(B) probation of a suspension or revocation of a residential mortgage loan originator license under this chapter on terms and conditions that the commissioner determines appropriate;

(C) a reprimand of a person with a residential mortgage loan originator license under this chapter; or

(D) an administrative penalty imposed on a person holding a residential mortgage loan originator license under this chapter.

(3) "Finance commission" means the Finance Commission of Texas.

(3-a) "Inspection" includes examination.

(4) "Mortgage banker" means a person who:

(A) accepts an application for a residential mortgage loan, makes a residential mortgage loan, or services residential mortgage loans; and

(B) is an approved or authorized:

(i) mortgagee with direct endorsement underwriting authority granted by the United States Department of Housing and Urban Development;

(ii) seller or servicer of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; or

(iii) issuer for the Government National Mortgage Association.

(4-a) "Nationwide Mortgage Licensing System and Registry" has the meaning assigned by Section 180.002.

(4-b) "Recovery fund" means the fund established and maintained by the commissioner under Subchapter F, Chapter 156, and Section 13.016.

(5) "Residential mortgage loan" has the meaning assigned by Section 180.002.

(5-a) "Residential mortgage loan company" has the meaning assigned by Section 156.002.

(6) "Residential mortgage loan originator" has the meaning assigned by Section 180.002.

Added by Acts 2003, 78th Leg., ch. 1301, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.053, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 2, eff. April 1, 2010.

Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 45, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 48, eff. September 1, 2013.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 157.0021. DISCLOSURE STATEMENT. (a) A mortgage banker that is a residential mortgage loan originator shall include a notice to a residential mortgage loan applicant with an application for a residential mortgage loan. The finance commission by rule shall adopt a standard disclosure form to be used by the mortgage banker. The form must:

(1) include the name, address, and toll-free telephone number for the Department of Savings and Mortgage Lending;

(2) contain information on how to file a complaint or recovery fund claim; and

(3) prescribe a method for proof of delivery to the consumer.

(b) A mortgage banker that indicates in its registration that

it acts as a residential mortgage loan servicer shall provide to the borrower of each residential mortgage loan it services the following notice not later than the 30th day after the date the mortgage banker commences servicing the loan:

"COMPLAINTS REGARDING THE SERVICING OF YOUR MORTGAGE SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, _____ (street address of the Department of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT _____ (telephone number of the Department of Savings and Mortgage Lending's toll-free consumer hotline)."

Added by Acts 2003, 78th Leg., ch. 1301, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.054, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 5, eff. April 1, 2010.

Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 50, eff. September 1, 2011.

Transferred and redesignated from Finance Code, Section 157.007 by Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 54, eff. September 1, 2013.

Sec. 157.0022. COMPLAINTS. (a) If the Department of Savings and Mortgage Lending receives a signed written complaint from a person concerning a mortgage banker, the commissioner shall notify the representative designated by the mortgage banker under Section 157.003(b) in writing of the complaint and provide a copy of the complaint to the representative.

(b) The commissioner may request documentary and other evidence considered by the commissioner as necessary to effectively evaluate the complaint, including correspondence, loan documents, and disclosures. A mortgage banker shall promptly provide any evidence requested by the commissioner.

(c) The commissioner may require the mortgage banker to resolve the complaint or to provide the commissioner with a response to the complaint. The commissioner may direct the mortgage banker in

writing to take specific action to resolve the complaint.

Added by Acts 2003, 78th Leg., ch. 1301, Sec. 1, eff. Jan. 1, 2004.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.055, eff. September 1, 2007.
Transferred and redesignated from Finance Code, Section 157.008 by Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 54, eff. September 1, 2013.

Sec. 157.0023. RULEMAKING AUTHORITY. (a) The Finance Commission of Texas may adopt rules necessary to implement or fulfill the purpose of this chapter.

(b) The Finance Commission of Texas may by rule adopt standard forms for, and require the use of the forms by, a mortgage banker who represents that an applicant for a loan is preapproved or has prequalified for the loan.

(c) The finance commission may adopt rules under this chapter as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

Added by Acts 2003, 78th Leg., ch. 1301, Sec. 1, eff. Jan. 1, 2004.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 7, eff. April 1, 2010.
Transferred and redesignated from Finance Code, Section 157.011 by Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 56, eff. September 1, 2013.

Sec. 157.0024. MORTGAGE INDUSTRY ADVISORY COMMITTEE. The mortgage industry advisory committee shall advise and assist the commissioner with respect to this chapter as provided by Section 156.104.

Added by Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 49, eff. September 1, 2013.

SUBCHAPTER C. REGISTRATION OF MORTGAGE BANKERS

Sec. 157.003. REGISTRATION REQUIRED. (a) A person must register under this chapter before the person may conduct the business of a mortgage banker in this state, unless the person is exempt under this section or Section 157.004.

(b) To register under this chapter, a mortgage banker shall:

(1) enroll with the Nationwide Mortgage Licensing System and Registry;

(2) be in good standing with the secretary of state;

(3) have a valid federal employer identification number;

(4) meet the qualification requirements for a mortgage banker;

(5) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued by the commissioner to the applicant; and

(6) provide to the commissioner a list of any offices that are separate and distinct from the primary office identified on the mortgage banker registration and that conduct residential mortgage loan business relating to this state, regardless of whether the offices are located in this state.

(b-1) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(11), eff. September 1, 2011.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(11), eff. September 1, 2011.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(11), eff. September 1, 2011.

(e) The registration of a mortgage banker is valid on approval of the commissioner and may be denied if the commissioner determines the mortgage banker does not meet the requirements of Subsection (b). If registration is denied, the mortgage banker may appeal the determination in the same manner as an applicant for a residential mortgage loan originator license may appeal a denial of issuance of a license under Section 157.017.

(f) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(7), eff. September 1, 2013.

(g) The registration may be withdrawn or revoked.

(h) A mortgage banker that services residential mortgage loans must indicate in its registration that it acts as a residential mortgage loan servicer.

Added by Acts 2003, 78th Leg., ch. 1301, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 3, eff. April 1, 2010.

Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 46, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 65(a)(11), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 51, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 87(7), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(18), eff. September 1, 2013.

Sec. 157.004. EXEMPTIONS. This chapter does not apply to:

(1) a federally insured bank, savings bank, savings and loan association, Farm Credit System Institution, or credit union;

(2) a subsidiary of a federally insured bank, savings bank, savings and loan association, Farm Credit System Institution, or credit union;

(3) a residential mortgage loan company licensed under Chapter 156;

(4) an authorized lender licensed under Chapter 342; or

(5) the state or a governmental agency, political subdivision, or other instrumentality of the state, or an employee of the state or a governmental agency, political subdivision, or instrumentality of the state who is acting within the scope of the person's employment.

Added by Acts 2003, 78th Leg., ch. 1301, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 4, eff. April 1, 2010.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 52, eff. September 1, 2013.

Sec. 157.005. UPDATE OF REGISTRATION. A mortgage banker shall update information contained in the registration not later than the 10th day after the date the information changes.

Added by Acts 2003, 78th Leg., ch. 1301, Sec. 1, eff. Jan. 1, 2004.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 47, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 53, eff. September 1, 2013.

Sec. 157.006. REGISTRATION AND ADMINISTRATION FEE. The commissioner may charge a mortgage banker a reasonable fee to cover the costs of the registration and of administering this chapter. The fee may not exceed $500 a year.

Added by Acts 2003, 78th Leg., ch. 1301, Sec. 1, eff. Jan. 1, 2004.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 48, eff. September 1, 2011.

Sec. 157.0061. RENEWAL OF REGISTRATION. (a) The registration of a mortgage banker expires on December 31 of the year in which the registration is approved and must be renewed annually.
(b) To renew a registration, a mortgage banker must comply with the requirements of Section 157.003 and pay a renewal fee in an amount not to exceed $500.

Added by Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 49, eff. September 1, 2011.

Sec. 157.0062. REINSTATEMENT AFTER EXPIRATION OF REGISTRATION. (a) A mortgage banker whose registration has expired may not engage in an activity for which registration is required under this chapter until the registration is renewed.
(b) A mortgage banker who is otherwise eligible to renew a registration, but has not done so before January 1, may renew the registration before March 1 by paying the commissioner a

reinstatement fee in an amount not to exceed $500.

(c) A mortgage banker whose registration has not been renewed before March 1 may not renew the registration. The mortgage banker may obtain a new registration by complying with the requirements and procedures for obtaining an original registration.

Added by Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 49, eff. September 1, 2011.

Sec. 157.009. TERMINATION OF REGISTRATION. (a) A mortgage banker may withdraw the mortgage banker's registration at any time.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(12), eff. September 1, 2011.

(c) The commissioner may revoke the registration of a mortgage banker if the mortgage banker fails or refuses to comply with the commissioner's written request for a response to a complaint.

(d) The commissioner may revoke the registration of a mortgage banker after considering a complaint filed under this chapter if the commissioner concludes that the mortgage banker has engaged in an intentional course of conduct to violate federal or state law or has engaged in an intentional course of conduct that constitutes improper, fraudulent, or dishonest dealings or has engaged in a negligent course of conduct exhibited through pattern or practice. The commissioner shall recite the basis of the decision in an order revoking the registration.

(d-1) The commissioner, after review of the circumstances, may revoke the registration of a mortgage banker if the mortgage banker has had a license, registration, or other certification revoked by a state or federal regulatory authority.

(e) If the commissioner proposes to revoke a registration under Subsection (c), (d), or (d-1), the mortgage banker is entitled to a hearing before the commissioner or a hearings officer, who shall propose a decision to the commissioner. The commissioner or hearings officer shall prescribe the time and place of the hearing. The hearing is governed by Chapter 2001, Government Code.

(f) A mortgage banker aggrieved by a ruling, order, or decision of the commissioner is entitled to appeal to a district court in the county in which the hearing was held. An appeal under this subsection is governed by Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 1301, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 6, eff. April 1, 2010.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 65(a)(12), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 55, eff. September 1, 2013.

Sec. 157.010. REREGISTRATION. (a) A mortgage banker whose registration is revoked by the commissioner may register again only after receiving the authorization of the commissioner. The commissioner shall authorize the registration if the commissioner concludes that the mortgage banker will comply with state and federal law and will not engage in improper, fraudulent, or dishonest dealings.

(b) A mortgage banker who seeks registration under this section may request and is entitled to a hearing before the commissioner or a hearings officer, who shall propose a decision to the commissioner. The hearing is governed by Chapter 2001, Government Code.

(c) If the commissioner denies authorization for the registration of a mortgage banker under this section, the commissioner shall recite the basis of the decision in an order denying the authorization.

(d) If the commissioner denies authorization for the registration of a mortgage banker under this section, the mortgage banker is entitled to appeal to a district court in Travis County. An appeal brought under this subsection is governed by Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 1301, Sec. 1, eff. Jan. 1, 2004.

SUBCHAPTER D. LICENSING OF RESIDENTIAL MORTGAGE LOAN ORIGINATORS; DISCLOSURES AND REQUIREMENTS

Sec. 157.012. LICENSE REQUIRED FOR RESIDENTIAL MORTGAGE LOAN ORIGINATORS. (a) An individual may not act or attempt to act in the capacity of a residential mortgage loan originator unless the individual is exempt under Section 157.0121 or 180.003(b), is acting

under the temporary authority described under Section 180.0511, or:

(1) is licensed under this chapter, sponsored by an appropriate entity, and enrolled with the Nationwide Mortgage Licensing System and Registry as required by Section 180.052; and

(2) complies with other applicable requirements of Chapter 180 and rules adopted by the finance commission under that chapter.

(b) The finance commission may adopt rules under this chapter as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

(c) To be eligible to be licensed as a residential mortgage loan originator, the individual, in addition to meeting the requirements of Subsection (a), must:

(1) satisfy the commissioner as to the individual's honesty, trustworthiness, and integrity;

(2) not be in violation of this chapter, Chapter 180, or any rules adopted under this chapter or Chapter 180;

(3) provide the commissioner with satisfactory evidence that the individual meets the qualifications provided by Chapter 180; and

(4) be a citizen of the United States or a lawfully admitted alien.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(8), eff. September 1, 2013.

(e) In this section, "appropriate entity" means an entity:

(1) that is licensed or registered under this chapter or Chapter 156; and

(2) for which the individual is acting as a residential mortgage loan originator.

Reenacted and amended by Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 51, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 58, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 59, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 87(8), eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 21, eff.

September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 695 (S.B. 2330), Sec. 1, eff. November 24, 2019.

Sec. 157.0121. EXEMPTIONS FROM RESIDENTIAL MORTGAGE LOAN ORIGINATOR REQUIREMENTS. (a) In this section, "depository institution," "dwelling," "federal banking agency," and "immediate family member" have the meanings assigned by Section 180.002.

(b) The following individuals are exempt from this chapter:

(1) a registered mortgage loan originator when acting for:

(A) a depository institution;

(B) a subsidiary of a depository institution that is:

(i) owned and controlled by the depository institution; and

(ii) regulated by a federal banking agency; or

(C) an institution regulated by the Farm Credit Administration;

(2) an individual who offers or negotiates the terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney:

(A) takes a residential mortgage loan application; and

(B) offers or negotiates the terms of a residential mortgage loan;

(4) an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence;

(5) any owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured; and

(6) an individual who is exempt as provided by Section 180.003(b).

(c) Employees of the following entities, when acting for the benefit of those entities, are exempt from the licensing and other

requirements of this chapter applicable to residential mortgage loan originators:

(1) a nonprofit organization:

(A) providing self-help housing that originates zero interest residential mortgage loans for borrowers who have provided part of the labor to construct the dwelling securing the loan; or

(B) that has designation as a Section 501(c)(3) organization by the Internal Revenue Service and originates residential mortgage loans for borrowers who, through a self-help program, have provided at least 200 labor hours or 65 percent of the labor to construct the dwelling securing the loan;

(2) any owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured; and

(3) an entity that is:

(A) a depository institution;

(B) a subsidiary of a depository institution that is:

(i) owned and controlled by the depository institution; and

(ii) regulated by a federal banking agency; or

(C) an institution regulated by the Farm Credit Administration.

(d) A person is not required to obtain a license under this chapter to originate a loan subject to Chapter 342 or a loan governed by Section 50(a)(6), Article XVI, Texas Constitution, if the person:

(1) is enrolled in the Nationwide Mortgage Licensing System and Registry;

(2) is licensed under Chapter 342; and

(3) makes consumer loans subject to:

(A) Subchapter G, Chapter 342; and

(B) Subchapter E or F, Chapter 342.

(e) The finance commission may grant an exemption from the residential mortgage loan originator licensing requirements of this chapter to a municipality, county, community development corporation, or public or private grant administrator to the extent the entity is administering the Texas HOME Investment Partnerships program if the commission determines that granting the exemption is not inconsistent with the intentions of the federal Secure and Fair Enforcement for

Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

Added by Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 60, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 258 (S.B. 1203), Sec. 2, eff. September 1, 2015.

Sec. 157.013. APPLICATION FOR LICENSE; FEES. (a) An application for a residential mortgage loan originator license must be:

(1) in writing;

(2) under oath; and

(3) on the form prescribed by the commissioner.

(b) An application for a residential mortgage loan originator license must be accompanied by:

(1) an application fee in an amount determined by the commissioner, not to exceed $500; and

(2) a recovery fund fee in an amount determined by the commissioner, not to exceed $20.

(c) An application fee under this section is not refundable and may not be credited or applied to any other fee or indebtedness owed by the person paying the fee.

(d) In addition to the disciplinary action by the commissioner authorized under Section 157.024(a)(6), the commissioner may collect a fee in an amount not to exceed $50 for any returned check or credit card charge back.

Added by Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 8, eff. April 1, 2010.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 52, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 61, eff. September 1, 2013.

Sec. 157.0131. CONVICTION OF OFFENSE. A person is considered to have been convicted of a criminal offense if:

(1) a sentence is imposed on the person;

(2) the person received probation or community supervision, including deferred adjudication or community service; or

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 62, eff. September 1, 2013.

Sec. 157.0132. CRIMINAL AND OTHER BACKGROUND CHECKS. (a) On receipt of an application for a residential mortgage loan originator license, the commissioner shall, at a minimum, conduct a criminal background and credit history check of the applicant.

(b) The commissioner shall conduct criminal background and credit history checks in accordance with Section 180.054, and, in connection with each application for a residential mortgage loan originator license or other individual license, the commissioner may conduct a criminal background check through the Department of Public Safety.

(c) The commissioner shall keep confidential any background information obtained under this section and may not release or disclose the information unless:

(1) the information is a public record at the time the commissioner obtains the information; or

(2) the commissioner releases the information:

(A) under order from a court; or

(B) to a governmental agency.

(d) Notwithstanding Subsection (c), criminal history record information obtained from the Federal Bureau of Investigation may be released or disclosed only to a governmental entity or as authorized by federal statute, federal rule, or federal executive order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 62, eff. September 1, 2013.

Sec. 157.014. ISSUANCE OF RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSE. (a) The commissioner shall issue a residential mortgage loan originator license to an applicant if the commissioner determines that the applicant meets all requirements and conditions for the license.

(b) Each residential mortgage loan originator license must have a unique identifier as provided by Chapter 180.

Added by Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 8, eff. April 1, 2010.

Sec. 157.0141. CONDITIONAL LICENSE. The commissioner may issue a conditional license. The finance commission by rule shall adopt reasonable terms and conditions for a conditional license.

Added by Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 63, eff. September 1, 2013.

Sec. 157.015. RENEWAL OF LICENSE. (a) A residential mortgage loan originator license issued under this chapter is valid through December 31 of the year of issuance and may be renewed on or before its expiration date if the residential mortgage loan originator:

(1) pays to the commissioner a renewal fee in an amount determined by the commissioner not to exceed $500 and a recovery fund fee as provided by Section 156.502;

(2) continues to meet the minimum requirements for license issuance; and

(3) provides the commissioner with satisfactory evidence that the residential mortgage loan originator has attended, during the term of the current license, continuing education courses in accordance with the applicable requirements of Chapter 180.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(8), eff. September 1, 2013.

(c) An application for renewal shall be in the form prescribed by the commissioner.

(d) On receipt of a request for a renewal of a license issued under this subchapter, the commissioner may conduct a criminal background check under Section 157.0132.

(d-1) A renewal fee is not refundable and may not be credited or applied to any other fee or indebtedness owed by the person paying the fee.

(e) The commissioner shall issue a renewal residential mortgage loan originator license if the commissioner finds that the applicant meets all of the requirements and conditions for the license.

(f) The commissioner may deny the renewal application for a residential mortgage loan originator license for the same reasons and grounds on which the commissioner could have denied an original application for a license, other than on the basis of the person's default on a student loan.

(g) The commissioner may deny the renewal application for a residential mortgage loan originator license if:

(1) the person seeking the renewal of the residential mortgage loan originator license is in violation of this chapter, Chapter 156, or Chapter 180, an applicable rule adopted under this chapter, Chapter 156, or Chapter 180, or any order previously issued to the person by the commissioner;

(2) the person seeking renewal of the residential mortgage loan originator license is in default in the payment of any administrative penalty, fee, charge, or other indebtedness owed under this title; or

(3) during the current term of the license, the commissioner becomes aware of any fact that would have been grounds for denial of an original license if the fact had been known by the commissioner on the date the license was granted.

(h) In addition to the disciplinary action by the commissioner authorized under Section 157.024(a)(6), the commissioner may collect a fee in an amount not to exceed $50 for any returned check or credit card charge back.

Added by Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 8, eff. April 1, 2010.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 64, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 87(8), eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 506 (S.B. 37), Sec. 4, eff. June 7, 2019.

Sec. 157.016. REINSTATEMENT AFTER EXPIRATION OF LICENSE; NOTICE. (a) A person whose residential mortgage loan originator license has expired may not engage in activities that require a license until the license has been reinstated or a new license has

been issued.

(b) A person whose residential mortgage loan originator license has not been renewed before January 1 but who is otherwise eligible to renew a license, and does so before March 1, may renew the license by paying the commissioner a reinstatement fee in an amount that is equal to 150 percent of the required renewal fee.

(c) A person whose residential mortgage loan originator license has not been renewed before March 1 may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(13), eff. September 1, 2011.

Added by Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 8, eff. April 1, 2010.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 53, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 65(a)(13), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 65, eff. September 1, 2013.

Sec. 157.017. DENIAL OF APPLICATIONS AND RENEWALS. (a) If the commissioner declines or fails to issue or renew a residential mortgage loan originator license, the commissioner shall promptly give written notice to the applicant that the application or renewal, as appropriate, was denied.

(b) Before the applicant or a person requesting the renewal of a residential mortgage loan originator license may appeal a determination to a district court as provided by Section 157.026(d), the applicant or person must file with the commissioner, not later than the 10th day after the date on which notice under Subsection (a) is received, an appeal of the ruling requesting a time and place for a hearing before an administrative law judge designated by the commissioner.

(c) The designated administrative law judge shall set the time and place for a hearing requested under Subsection (b) not later than the 90th day after the date on which the appeal is received. The

administrative law judge shall provide at least 10 days' notice of the hearing to the applicant or person requesting the renewal. The time of the hearing may be continued periodically with the consent of the applicant or person requesting the renewal. After the hearing, the commissioner shall enter an order relative to the applicant based on the findings of fact, conclusions of law, and recommendations of the administrative law judge.

(d) If an applicant or person requesting the renewal fails to request a hearing under this section, the commissioner's refusal to issue or renew a license is final and not subject to review by the courts.

(e) A hearing held under this section is governed by Chapter 2001, Government Code. An appeal of a final order issued under this section may be made in accordance with Section 157.026(d).

(f) A person who requests a hearing under this section shall be required to pay a deposit to secure the payment of the costs of the hearing in an amount to be determined by the commissioner not to exceed $500. The entire deposit shall be refunded to the person if the person prevails in the contested case hearing. If the person does not prevail, any portion of the deposit in excess of the costs of the hearing assessed against that person shall be refunded.

(g) A person whose application for or request to renew a license has been denied is not eligible to be licensed for a period of two years after the date the denial becomes final, or a shorter period as determined by the commissioner after evaluating the specific circumstances of the denial. The finance commission may adopt rules to provide conditions for which the commissioner may shorten the period of ineligibility.

Added by Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 8, eff. April 1, 2010.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 66, eff. September 1, 2013.

Sec. 157.019. MODIFICATION OF LICENSE; CHANGE OF SPONSORSHIP. (a) Before the 10th day preceding the effective date of an address change, a residential mortgage loan originator shall notify the commissioner or authorized designee in writing of the new address.

(b) A person licensed under this chapter must notify the commissioner or the commissioner's authorized designee not later than the 10th day after the date of any change in the person's name for the issuance of an amended license.

(c) When the sponsorship of a residential mortgage loan originator is terminated, the residential mortgage loan originator or the former sponsoring entity licensed or registered under this chapter or Chapter 156 shall immediately notify the commissioner. The residential mortgage loan originator's license then becomes inactive. The residential mortgage loan originator license may be activated if, before the license expires, an entity licensed or registered under this chapter or Chapter 156 files a request, accompanied by a $25 fee, notifying the commissioner that the entity will sponsor the residential mortgage loan originator and will assume responsibility for the actions of the residential mortgage loan originator.

(d) A residential mortgage loan originator may not conduct business under any assumed name that is not the registered assumed name of the entity licensed or registered under this chapter or Chapter 156 that is sponsoring the originator.

(e) A fee under this section is not refundable and may not be credited or applied to any other fee or indebtedness owed by the person paying the fee.

Added by Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 8, eff. April 1, 2010.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 54, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 67, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 68, eff. September 1, 2013.

Sec. 157.020. MORTGAGE CALL REPORT. (a) Each mortgage banker shall file a mortgage call report with the commissioner or the commissioner's authorized designee on a form prescribed by the commissioner or authorized designee. The report must be filed as frequently as required by the Nationwide Mortgage Licensing System

and Registry. The report is a statement of condition of the mortgage banker and the mortgage banker's operations, including financial statements and production activity volumes, and any other similar information required by the Nationwide Mortgage Licensing System and Registry.

(a-1) A licensed residential mortgage loan originator, as required by the commissioner, shall file a mortgage call report with the commissioner or the commissioner's authorized designee on a form prescribed by the commissioner or authorized designee. The report:

(1) is a statement of condition of the residential mortgage loan originator;

(2) must include any information required by the commissioner; and

(3) must be filed as frequently as required by the commissioner.

(b) The information contained in the mortgage call report related to residential mortgage loan origination volume or other trade information is confidential and may not be disclosed by the commissioner, the commissioner's authorized designee, or any other employee of the Department of Savings and Mortgage Lending.

Added by Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 8, eff. April 1, 2010.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 55, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 69, eff. September 1, 2013.

Sec. 157.0201. RECOVERY FUND. The recovery fund established, administered, and maintained under Section 13.016 and Subchapter F, Chapter 156, shall be used as provided by Subchapter F, Chapter 156, to reimburse residential mortgage loan applicants for actual damages incurred because of acts committed by residential mortgage loan originators licensed under this chapter when the act was committed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 56, eff. September 1, 2011.

Sec. 157.02012. STANDARD FORMS. (a) The finance commission by rule shall adopt one or more standard forms for use by a residential mortgage loan originator, sponsored by and conducting business for a registered mortgage banker under this chapter, in representing that an applicant for a residential mortgage loan is preapproved or has prequalified for the loan.

(b) The finance commission shall adopt rules requiring a residential mortgage loan originator licensed under this chapter to use the forms adopted by the finance commission under Subsection (a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 70, eff. September 1, 2013.

Sec. 157.02013. SECONDARY MARKET TRANSACTIONS. This chapter does not prohibit a residential mortgage loan originator sponsored by and conducting business for a registered mortgage banker under this chapter from receiving compensation from a party other than the mortgage applicant for the sale, transfer, assignment, or release of rights on the closing of a mortgage transaction.

Added by Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 70, eff. September 1, 2013.

Sec. 157.02014. AFFILIATED BUSINESS ARRANGEMENTS. Unless prohibited by federal or state law, this chapter may not be construed to prevent affiliated or controlled business arrangements or loan origination services by or between residential mortgage loan originators sponsored by and conducting business for a registered mortgage banker under this chapter and other professionals if the residential mortgage loan originator complies with all applicable federal and state laws permitting those arrangements or services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 70, eff. September 1, 2013.

Sec. 157.02015. RULEMAKING AUTHORITY WITH RESPECT TO RESIDENTIAL MORTGAGE LOAN ORIGINATORS. (a) The finance commission may adopt rules to prohibit false, misleading, or deceptive practices

by residential mortgage loan originators but may not adopt any other rules restricting competitive bidding or advertising by residential mortgage loan originators. When adopting rules under this subsection, the finance commission may not restrict:

(1) the use of any medium for an advertisement;

(2) the personal appearance of or voice of a person in an advertisement;

(3) the size or duration of an advertisement; or

(4) a residential mortgage loan originator's advertisement under a trade name.

(b) The finance commission may adopt rules regarding books and records that a residential mortgage loan originator licensed under this chapter is required to keep, including the location at which the books and records must be kept.

(c) The finance commission shall consult with the commissioner when proposing and adopting rules under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 70, eff. September 1, 2013.

Sec. 157.02016. ADMINISTRATION OF SUBCHAPTER. The commissioner shall administer and enforce this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 70, eff. September 1, 2013.

SUBCHAPTER E. ENFORCEMENT

Sec. 157.021. INSPECTION; INVESTIGATIONS. (a) The commissioner may conduct an inspection of a person licensed as a residential mortgage loan originator as the commissioner determines necessary to determine whether the person is complying with this chapter, Chapter 180, and applicable rules. An inspection under this subsection may include inspection of the books, records, documents, operations, and facilities of the person. The commissioner may request the assistance and cooperation of the sponsoring mortgage banker in providing needed documents and records. The commissioner may not make a request of the sponsoring mortgage banker for documents and records unrelated to the person being investigated or inspected. The commissioner may share evidence of criminal activity

gathered during an inspection or investigation with any state or federal law enforcement agency.

(b) On the signed written complaint of a person, the commissioner shall investigate the actions and records of a person licensed as a residential mortgage loan originator if the complaint, or the complaint and documentary or other evidence presented in connection with the complaint, provides a reasonable cause. Before commencing an investigation, the commissioner must notify the licensed residential mortgage loan originator in writing of the complaint and that the commissioner intends to investigate the matter.

(c) For reasonable cause, the commissioner at any time may investigate a person licensed as a residential mortgage loan originator to determine whether the person is complying with this chapter, Chapter 180, and applicable rules.

(d) The commissioner may conduct an undercover or covert investigation only if the commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of this chapter.

(e) The finance commission by rule shall provide guidelines to govern an inspection or investigation, including rules to:

(1) determine the information and records of the licensed residential mortgage loan originator to which the commissioner may demand access during an inspection or an investigation; and

(2) establish what constitutes reasonable cause for an investigation.

(f) Information obtained by the commissioner during an inspection or an investigation is confidential unless disclosure of the information is permitted or required by other law.

(g) The commissioner may share information gathered during an investigation or inspection with any state or federal agency only if the commissioner determines there is a valid reason for the sharing.

(h) The commissioner may require reimbursement of expenses for each examiner for an on-site examination or inspection of a licensed residential mortgage loan originator if records are located out of state and are not made available for examination or inspection by the examiner in this state. The finance commission by rule shall set the maximum amount for the reimbursement of expenses authorized under this subsection.

Added by Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 8, eff. April 1, 2010.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 72, eff. September 1, 2013.

Sec. 157.0211. MULTI-STATE EXAMINATION AUTHORITY OF RESIDENTIAL MORTGAGE LOAN SERVICER. To ensure that mortgage bankers that act as residential mortgage loan servicers operate in this state in compliance with this chapter and with other law in accordance with this chapter, the commissioner or the commissioner's designee may participate in multi-state mortgage examinations as scheduled by the Conference of State Bank Supervisors Multi-State Mortgage Committee or by the Consumer Financial Protection Bureau in accordance with the protocol for such examinations.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 5, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 73, eff. September 1, 2013.

Sec. 157.022. ISSUANCE AND ENFORCEMENT OF SUBPOENA. (a) During an investigation, the commissioner may issue a subpoena that is addressed to a peace officer of this state or other person authorized by law to serve citation or perfect service. The subpoena may require a person to give a deposition, produce documents, or both.

(b) If a person disobeys a subpoena or if a person appearing in a deposition in connection with the investigation refuses to testify, the commissioner may petition a district court in Travis County to issue an order requiring the person to obey the subpoena, testify, or produce documents relating to the matter. The court shall promptly set an application to enforce a subpoena issued under Subsection (a) for hearing and shall cause notice of the application and the hearing to be served on the person to whom the subpoena is directed.

Added by Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 8, eff. April 1, 2010.

Sec. 157.023. ADMINISTRATIVE PENALTY. (a) The commissioner, after notice and opportunity for a hearing, may impose an administrative penalty on an individual who is licensed or required to be licensed under this chapter as a residential mortgage loan originator and who violates this chapter, Chapter 156, or a rule or order adopted under this chapter or Chapter 156.

(b) The amount of the penalty may not exceed $25,000 for each violation. The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm to property caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(c) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the commissioner to contest the affidavit as provided by those rules.

(d) The attorney general may sue to collect the penalty.

(e) An appeal of an administrative penalty under this section is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 8, eff. April 1, 2010.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 57, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 74, eff. September 1, 2013.

Sec. 157.024. DISCIPLINARY ACTION; CEASE AND DESIST ORDER. (a) The commissioner may order disciplinary action against a licensed residential mortgage loan originator when the commissioner, after notice and opportunity for a hearing, has determined that the person:

(1) obtained a license, including a renewal of a license, under this chapter through a false or fraudulent representation or made a material misrepresentation in an application for a license or for the renewal of a license under this chapter;

(2) published or caused to be published an advertisement related to the business of a residential mortgage loan originator that:

(A) was misleading;

(B) was likely to deceive the public;

(C) in any manner tended to create a misleading impression;

(D) failed to identify as a licensed residential mortgage loan originator the person causing the advertisement to be published; or

(E) violated federal or state law;

(3) while performing an act for which a license under this chapter or Chapter 156 is required, engaged in conduct that constitutes improper, fraudulent, or dishonest dealings;

(4) entered a plea of nolo contendere to or was convicted of a criminal offense that is a felony or that involves fraud or moral turpitude in a court of this or another state or in a federal court;

(5) failed to use a fee collected in advance of closing a residential mortgage loan for a purpose for which the fee was paid;

(6) failed within a reasonable time to honor a credit card charge back or a check issued to the commissioner after the commissioner mailed a request for payment, including any applicable fees, by mail to the person's last known home address as reflected in the commissioner's records;

(7) induced or attempted to induce a party to a contract to breach the contract so the person could make a residential mortgage loan;

(8) published or circulated an unjustified or unwarranted threat of legal proceedings in matters related to the person's actions or services as a licensed residential mortgage loan originator;

(9) aided, abetted, or conspired with a person to circumvent the requirements of this chapter or Chapter 156;

(10) acted in the dual capacity of a licensed residential mortgage loan originator and real estate broker, salesperson, or attorney in a transaction without the knowledge and written consent of the mortgage applicant or in violation of applicable requirements under federal law;

(11) discriminated against a prospective borrower on the basis of race, color, religion, sex, national origin, ancestry, familial status, or disability;

(12) failed or refused on demand to:

(A) produce a document, book, or record concerning a residential mortgage loan transaction conducted by the licensed residential mortgage loan originator for inspection by the commissioner or the commissioner's authorized personnel or representative;

(B) give the commissioner or the commissioner's authorized personnel or representative free access to the books or records relating to the residential mortgage loan originator's business kept by any other person or any business entity through which the residential mortgage loan originator conducts residential mortgage loan origination activities; or

(C) provide information requested by the commissioner as a result of a formal or informal complaint made to the commissioner;

(13) failed without just cause to surrender, on demand, a copy of a document or other instrument coming into the residential mortgage loan originator's possession that was provided to the residential mortgage loan originator by another person making the demand or that the person making the demand is under law entitled to receive;

(14) disregarded or violated this chapter, Chapter 156, a rule adopted under this chapter or Chapter 156, or an order issued by the commissioner under this chapter or Chapter 156;

(15) provided false information to the commissioner during the course of an investigation or inspection;

(16) paid compensation to a person who is not licensed or exempt under this chapter for acts for which a license under this chapter or Chapter 156 is required;

(17) established an association, by employment or

otherwise, with a person not licensed, registered, or exempt under this chapter or Chapter 156 who was expected or required to act as a residential mortgage loan originator or residential mortgage loan company; or

(18) charged or received, directly or indirectly, a fee for assisting a mortgage applicant in obtaining a residential mortgage loan under Chapter 156 before all of the services that the person agreed to perform for the mortgage applicant are completed, and the proceeds of the residential mortgage loan have been disbursed to or on behalf of the mortgage applicant, except as provided by Section 156.304.

(b) The commissioner may also order disciplinary action against a licensed residential mortgage loan originator, after notice and opportunity for a hearing, if the commissioner, during the current term of the license, becomes aware of any fact that would have been grounds for denial of an original license if the fact had been known by the commissioner on the date the license was granted.

(c) In addition to disciplinary action by the commissioner authorized under Subsections (a) and (b), the commissioner, if the commissioner has reasonable cause to believe that a licensed residential mortgage loan originator has violated or is about to violate this section, may issue without notice and hearing an order to cease and desist continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter.

(d) An order issued under Subsection (c) must contain a reasonably detailed statement of the facts on which the order is made. If a residential mortgage loan originator against whom the order is made requests a hearing, the commissioner shall set and give notice of a hearing before the commissioner or an administrative law judge. The hearing shall be governed by Chapter 2001, Government Code. Based on the findings of fact, conclusions of law, and recommendations of the administrative law judge, the commissioner by order may find that a violation has occurred or not occurred.

(e) If a hearing is not requested under Subsection (d) not later than the 30th day after the date on which an order is made, the order is considered final and not appealable.

(f) The commissioner, after giving notice, may impose against a residential mortgage loan originator who violates a cease and desist order an administrative penalty in an amount not to exceed $1,000 for

each day of the violation. In addition to any other remedy provided by law, the commissioner may institute in district court a suit for injunctive relief and to collect the administrative penalty. A bond is not required of the commissioner with respect to injunctive relief granted under this subsection.

(g) For purposes of Subsection (a), a residential mortgage loan originator is considered convicted if a sentence is imposed on that person, that person receives community supervision, including deferred adjudication community supervision, or the court defers final disposition of that person's case.

(h) If a residential mortgage loan originator fails to pay an administrative penalty that has become final or fails to comply with an order of the commissioner that has become final, in addition to any other remedy provided under law, the commissioner, on not less than 10 days' notice to the residential mortgage loan originator, may without a prior hearing suspend the residential mortgage loan originator's license. The suspension continues until the residential mortgage loan originator has complied with the administrative order or paid the administrative penalty. During the period of suspension, the residential mortgage loan originator may not originate a residential mortgage loan and all compensation received by the residential mortgage loan originator during the period of suspension is subject to forfeiture as provided by Section 157.031(a-1).

(i) An order of suspension under Subsection (h) may be appealed. An appeal is a contested case governed by Chapter 2001, Government Code. A hearing of an appeal of an order of suspension issued under Subsection (h) shall be held not later than the 15th day after the date of receipt of the notice of appeal. The appellant shall be provided at least three days' notice of the time and place of the hearing.

(j) An order revoking the license of a residential mortgage loan originator may provide that the person is prohibited, without previously obtaining written consent of the commissioner, from:

(1) engaging in the business of originating or making residential mortgage loans;

(2) otherwise affiliating with a person for the purpose of engaging in the business of originating or making residential mortgage loans; and

(3) being an employee, officer, director, manager, shareholder, member, agent, contractor, or processor of a mortgage

banker, residential mortgage loan company, or residential mortgage loan originator for a residential mortgage loan company.

(k) On notice and opportunity for a hearing, the commissioner may suspend the license of a residential mortgage loan originator under this chapter if an indictment or information is filed or returned alleging that the person committed a criminal offense involving fraud, theft, or dishonesty. The suspension continues until the criminal case is dismissed or the person is acquitted.

(l) The commissioner may, in the commissioner's discretion, rescind or vacate any previously issued order.

Added by Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 8, eff. April 1, 2010.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 58, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 75, eff. September 1, 2013.

Sec. 157.0241. REVOCATION OR SUSPENSION OF LICENSE FOR PAYMENT FROM RECOVERY FUND. (a) The commissioner may revoke or suspend a license issued under this chapter on proof that the commissioner has made a payment from the recovery fund of any amount toward satisfaction of a claim against a residential mortgage loan originator licensed under this chapter.

(b) The commissioner may seek to collect from a residential mortgage loan originator the amount paid from the recovery fund on behalf of the residential mortgage loan originator and any costs associated with investigating and processing the claim against the recovery fund or with collection of reimbursement for payments from the recovery fund, plus interest at the current legal rate until the amount has been repaid in full. Any amount, including interest, recovered by the commissioner shall be deposited to the credit of the recovery fund.

(c) The commissioner may probate an order revoking or suspending a license under this section.

(d) A person on whose behalf payment was made from the recovery fund is not eligible to receive a new license or have a suspension lifted under this chapter until the person has repaid in full, plus

interest at the current legal rate, the amount paid from the recovery fund on the person's behalf and any costs associated with investigating and processing the claim against the recovery fund or with collection of reimbursement for payments from the recovery fund.

(e) This section does not limit the authority of the commissioner to take disciplinary action against a residential mortgage loan originator for a violation of this chapter, Chapter 156, or the rules adopted by the finance commission under this chapter or Chapter 156. The repayment in full to the recovery fund of all obligations of a residential mortgage loan originator does not nullify or modify the effect of any other disciplinary proceeding brought under this chapter or Chapter 156.

Added by Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 59, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 76, eff. September 1, 2013.

Sec. 157.025. RESTITUTION. The commissioner may order a residential mortgage loan originator to make restitution for any amount received by that person in violation of this chapter or Chapter 156.

Added by Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 8, eff. April 1, 2010.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 77, eff. September 1, 2013.

Sec. 157.026. HEARINGS AND JUDICIAL REVIEW. (a) The commissioner may employ an enforcement staff to investigate and prosecute complaints made against residential mortgage loan originators licensed under this chapter. The commissioner may employ an administrative law judge to conduct hearings under this section. The commissioner may collect and deposit any court costs assessed under a final order.

(b) If the commissioner proposes to suspend or revoke a license of a residential mortgage loan originator or if the commissioner

refuses to issue or renew a residential mortgage loan originator license under this chapter, the applicant or license holder is entitled to a hearing before the commissioner or an administrative law judge who shall make a proposal for decision to the commissioner. The commissioner or administrative law judge shall prescribe the time and place of the hearing. The hearing is governed by Chapter 2001, Government Code.

(c) The commissioner or administrative law judge may issue subpoenas for the attendance of witnesses and the production of records or documents. Process issued by the commissioner or the administrative law judge may extend to all parts of the state and may be served by any person designated by the commissioner or administrative law judge.

(d) An individual aggrieved by a ruling, order, or decision of the commissioner has the right to appeal to a district court in the county in which the hearing was held. An appeal under this subsection is governed by Chapter 2001, Government Code.

(e) The commissioner may, in the commissioner's discretion, rescind or vacate any previously issued revocation order.

Added by Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 8, eff. April 1, 2010.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 78, eff. September 1, 2013.

Sec. 157.027. CIVIL ACTIONS AND INJUNCTIVE RELIEF. (a) A residential mortgage loan applicant injured by a violation of this chapter or Chapter 156 by a residential mortgage loan originator may bring an action for recovery of actual monetary damages and reasonable attorney's fees and court costs.

(b) The commissioner, the attorney general, or a residential mortgage loan applicant may bring an action to enjoin a violation of this chapter by a residential mortgage loan originator.

(c) A remedy provided by this section is in addition to any other remedy provided by law.

Added by Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 8, eff. April 1, 2010.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 79, eff. September 1, 2013.

Sec. 157.028. BURDEN OF PROOF TO ESTABLISH AN EXEMPTION. The burden of proving an exemption in a proceeding or action brought under this chapter is on the person claiming the benefit of the exemption.

Added by Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 8, eff. April 1, 2010.

Sec. 157.029. RELIANCE ON WRITTEN NOTICES FROM THE COMMISSIONER. A person does not violate this chapter with respect to an action taken or omission made in reliance on a written notice, written interpretation, or written report from the commissioner unless a subsequent amendment to this chapter or a rule adopted under this chapter affects the commissioner's notice, interpretation, or report.

Added by Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 8, eff. April 1, 2010.

Sec. 157.030. COMPLETION OF RESIDENTIAL MORTGAGE ORIGINATION SERVICES. (a) On disbursement of mortgage proceeds to or on behalf of the residential mortgage loan applicant, the residential mortgage loan originator who assisted the applicant in obtaining the residential mortgage loan is considered to have completed the performance of the loan originator's services for the applicant and owes no additional duties or obligations to the applicant with respect to the loan.

(b) This section does not limit or preclude the liability of a residential mortgage loan originator for:

(1) failing to comply with this chapter, Chapter 156, or a rule adopted under this chapter or Chapter 156;

(2) failing to comply with a provision of or duty arising under an agreement with a residential mortgage loan applicant under this chapter or Chapter 156; or

(3) violating any other state or federal law.

Added by Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 8, eff. April 1, 2010.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 80, eff. September 1, 2013.

Sec. 157.031. UNLICENSED ACTIVITY; OFFENSE. (a) An individual who is not exempt under this chapter or other applicable law and who acts as a residential mortgage loan originator without first obtaining a license required under this chapter commits an offense. An offense under this subsection is a Class B misdemeanor. A second or subsequent conviction for an offense under this subsection is a Class A misdemeanor.

(a-1) An individual who received money, or the equivalent of money, as a fee or profit because of or in consequence of the individual acting as a residential mortgage loan originator without an active license or being exempt under this chapter is liable for damages in an amount that is not less than the amount of the fee or profit received and not to exceed three times the amount of the fee or profit received, as may be determined by the court. An aggrieved person may recover damages under this subsection in a court.

(b) If the commissioner has reasonable cause to believe that a person who is not licensed or exempt under this chapter has engaged, or is about to engage, in an act or practice for which a license is required under this chapter, the commissioner may issue, without notice and hearing, an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter. The order must contain a reasonably detailed statement of the facts on which the order is made. The order may assess an administrative penalty in an amount not to exceed $1,000 per day for each violation and may require a person to pay to a residential mortgage loan applicant any compensation received by the person from the applicant in violation of this chapter. If a person against whom the order is made requests a hearing, the commissioner shall set and give notice of a hearing before the commissioner or an administrative law judge. The hearing shall be governed by Chapter 2001, Government Code. An order under this subsection becomes final unless the person to whom the order is issued requests a hearing not later than the 30th day after the date

the order is issued.

(c) If a hearing has not been requested under Subsection (b) not later than the 30th day after the date the order is made, the order is considered final and not appealable. The commissioner, after giving notice, may impose against a person who violates a cease and desist order, an administrative penalty in an amount not to exceed $1,000 for each day of a violation. In addition to any other remedy provided by law, the commissioner may institute in district court a suit for injunctive relief and to collect the administrative penalty. A bond is not required of the commissioner with respect to injunctive relief granted under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 8, eff. April 1, 2010.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 81, eff. September 1, 2013.

Sec. 157.032. POWERS OF COMMISSIONER. (a) In addition to any other action, proceeding, or remedy authorized by law, the commissioner may institute an action in the commissioner's name to enjoin a violation of Subchapter D or a rule adopted under Subchapter D. To sustain an action filed under this subsection, it is not necessary to allege or prove that an adequate remedy at law does not exist or that substantial or irreparable damage would result from a continued violation of Subchapter D.

(b) The commissioner is not required to provide an appeal bond in any action or proceeding to enforce Subchapter D.

(c) The commissioner may authorize specific employees to conduct hearings and make recommendations for final decisions in contested cases.

Added by Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 82, eff. September 1, 2013.

CHAPTER 158. RESIDENTIAL MORTGAGE LOAN SERVICERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 158.001. SHORT TITLE. This chapter may be cited as the Residential Mortgage Loan Servicer Registration Act.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.

Sec. 158.002. DEFINITIONS. In this chapter:

(1) "Commissioner" means the savings and mortgage lending commissioner.

(2) "Finance commission" means the Finance Commission of Texas.

(3) "Person" means an individual, corporation, company, limited liability company, partnership, or association.

(4) "Registrant" means a person registered under this chapter.

(5) "Residential mortgage loan" means a loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate.

(6) "Residential mortgage loan servicer" means a person who:

(A) receives scheduled payments from a borrower under the terms of a residential mortgage loan, including amounts for escrow accounts; and

(B) makes the payments of principal and interest to the owner of the loan or other third party and makes any other payments with respect to the amounts received from the borrower as may be required under the terms of the servicing loan document or servicing contract.

(7) "Residential real estate" means real property located in this state on which a dwelling designed for occupancy for one to four families is constructed or intended to be constructed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.

Sec. 158.003. PURPOSE; RULES. (a) The purpose of this chapter is to provide regulatory authority to ensure that residential mortgage loan servicers registered under this chapter comply with federal and state laws, rules, and regulations.

(b) The finance commission may adopt and enforce rules

necessary for the purposes of or to ensure compliance with this chapter.

(c) The finance commission shall consult with the commissioner when proposing and adopting rules under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.

SUBCHAPTER B. REGISTRATION OF RESIDENTIAL MORTGAGE LOAN SERVICERS

Sec. 158.051. REGISTRATION REQUIRED. A person may not act as a residential mortgage loan servicer, directly or indirectly, for a residential mortgage loan secured by a lien on residential real estate in this state unless the person is registered under this chapter or is exempt under Section 158.052.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.

Sec. 158.052. EXEMPTIONS; APPLICABILITY. (a) This chapter does not require registration by:

(1) a federal or state depository institution, or a subsidiary or affiliate of a federal or state depository institution;

(2) a person registered under Chapter 157;

(3) a person licensed under Chapter 342 or regulated under Chapter 343, if the person does not act as a residential mortgage loan servicer servicing first-lien secured loans; or

(4) a person making a residential mortgage loan with the person's own funds, or to secure all or a portion of the purchase price of real property sold by that person.

(b) This chapter applies only to a residential mortgage loan servicer that services at least one residential mortgage loan.

(c) Nothing in this chapter permits a person who is not otherwise exempt from this chapter to act as a residential mortgage loan originator, as defined by Section 180.002, without obtaining a license under the applicable provisions of law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.

Sec. 158.053. APPLICATION FOR REGISTRATION; FEE. (a) To register under this chapter, a residential mortgage loan servicer shall file with the commissioner an application for registration that must:

(1) be in writing;

(2) be under oath;

(3) be in the form prescribed by the commissioner; and

(4) contain:

(A) the name and the address of the principal place of business of the applicant; and

(B) the name, title, and address of the person authorized by the applicant to respond to complaints.

(b) At the time of making application, the applicant shall pay to the commissioner a registration fee in an amount not to exceed $500 as determined by the finance commission.

(c) An applicant is not required to pay a registration fee under Subsection (b) if the applicant:

(1) collects delinquent consumer debts owed on residential mortgage loans;

(2) does not own the residential mortgage loans for which the applicant acts as a residential mortgage loan servicer; and

(3) is a third-party debt collector that has filed a bond in compliance with Chapter 392.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.

Sec. 158.054. UPDATE OF REGISTRATION. A registrant shall notify the commissioner of a change in any of the information provided in the registration application not later than the 30th day after the date the information changes.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.

Sec. 158.055. BOND. (a) Before approval of the registration, an applicant for registration under this chapter shall file with the commissioner, and shall keep in force while the registration remains in effect, a surety bond meeting the requirements of this section or,

if a surety bond is not available to the applicant from a surety company authorized to do business in this state, other collateral of like kind as determined by the commissioner.

(b) The bond must be:

(1) in an amount not to exceed $200,000, except as provided by Subsection (c); and

(2) payable to the commissioner.

(c) This subsection applies only to an applicant who services only residential mortgage loans secured by unimproved residential real estate or services only residential mortgage loans secured by foreclosed property with a dwelling, or both. If sales of the property described by this subsection do not exceed $1 million annually, the bond for an applicant described by this section must be in an amount not to exceed $25,000.

(d) If a registrant fails to comply with a final order of the commissioner, the commissioner may make a claim on the bond to recover and pay a consumer the amount to which the consumer was entitled under the commissioner's order.

(e) When an action is commenced on a registrant's bond, the commissioner may require the filing of a new acceptable bond. Immediately on recovery on any action on the bond, the registrant shall file a new bond.

(f) The bond procedures established by this section are created to specifically exclude the participation of registrants in the recovery fund established under Chapter 156.

(g) The finance commission may adopt rules establishing the terms and conditions of the surety bond and the qualifications of the surety.

(h) A registrant is not required to file a bond under this chapter if the registrant:

(1) collects delinquent consumer debts owed on residential mortgage loans;

(2) does not own the residential mortgage loans for which the registrant acts as a residential mortgage loan servicer; and

(3) is a third-party debt collector that has filed a bond in compliance with Chapter 392.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.

Sec. 158.056. APPROVAL OF REGISTRATION. The commissioner shall approve an application for registration under this chapter on the applicant's payment of the required fees and the commissioner's approval of the surety bond.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.

Sec. 158.057. NOTICE OF CHANGE OF REGISTRANT'S CONDITION. (a) A registrant shall notify the commissioner in writing not later than the 10th day after:

(1) the filing for bankruptcy or reorganization of the registrant;

(2) the filing of a criminal indictment related in any manner to the registrant's activities; or

(3) the receipt of notification of the issuance of a final order to cease and desist, a final order of the suspension or revocation of a license or registration, or another final formal or informal regulatory action taken against the registrant in this or another state.

(b) The notification required by Subsection (a)(3) must include the reasons for a final regulatory action described by that subdivision.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.

Sec. 158.058. RENEWAL OF REGISTRATION. (a) On or before December 31 of each year, a registrant shall renew its registration for the next calendar year and shall pay to the commissioner a renewal fee in an amount not to exceed $500 as determined by the finance commission. To renew a registration, a registrant must continue to meet all standards for registration provided by this chapter.

(b) If a registrant fails to file a renewal and pay the renewal fee on or before December 31 of a calendar year, the registrant's registration is considered expired at that time and the registrant:

(1) must reapply for registration as provided by Section 158.053; and

(2) may not conduct business as a residential mortgage loan servicer until the registration is approved.

(c) The commissioner may refuse to renew a registration if the registrant:

(1) has failed to pay any fees or penalties imposed under this chapter;

(2) has failed to provide the surety bond required under this chapter; or

(3) is not in compliance with any final order of the commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.

Sec. 158.059. REVOCATION OF REGISTRATION. The commissioner may, after notice and hearing, revoke a registration under this chapter if:

(1) the registrant fails or refuses to comply with the commissioner's written request for a response to a complaint;

(2) the commissioner determines that the registrant has engaged in an intentional course of conduct to violate federal or state law or has engaged in an intentional course of conduct that constitutes fraudulent, deceptive, or dishonest dealings; or

(3) the registrant is not in compliance with any final order of the commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.

Sec. 158.060. APPEAL OF CERTAIN COMMISSIONER ACTIONS. The denial, nonrenewal, or revocation by the commissioner of a registration under this chapter and the appeal of that action are governed by Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.

SUBCHAPTER C. INVESTIGATIONS, COMPLAINTS, AND ACTIONS AGAINST

REGISTRANT

Sec. 158.101. DISCLOSURE STATEMENT. A registrant shall provide to the borrower of each residential mortgage loan the following notice not later than the 30th day after the registrant commences servicing the loan:

"COMPLAINTS REGARDING THE SERVICING OF YOUR MORTGAGE SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, _____ (street address of the Department of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT _____ (telephone number of the Department of Savings and Mortgage Lending's toll-free consumer hotline)."

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.

Sec. 158.102. INVESTIGATION OF COMPLAINTS AGAINST REGISTRANT; SURCHARGE. (a) On receipt of a signed written complaint concerning a registrant by the Department of Savings and Mortgage Lending, the commissioner or the commissioner's designee:

(1) shall notify the representative designated by the registrant in the registration application in writing of the complaint and provide a copy of the complaint to the representative;

(2) may conduct an investigation with authority to access, receive, and use in the investigation any books, accounts, records, files, documents, information, or other evidence; and

(3) may request that the registrant provide documentary and other evidence considered by the commissioner necessary to effectively evaluate the complaint, including correspondence, loan documents, and disclosures.

(b) A registrant shall promptly provide any evidence requested by the commissioner.

(c) Information obtained by the commissioner during an investigation is confidential unless disclosure of the information is permitted or required by other law or court order. The commissioner may share information gathered during an investigation with any state or federal agency.

(d) In addition to the registration fee, the finance commission by rule may impose a complaint investigation fee on a registrant based on the costs incurred by the Department of Savings and Mortgage

Lending resulting from the investigation of complaints against the registrant.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.

Sec. 158.103. ACTION ON COMPLAINT. (a) If, after conducting an investigation, the commissioner determines that the registrant has violated this chapter or another applicable law, the commissioner may do one or more of the following:

(1) issue an order to the registrant to resolve the complaint by paying to the consumer the damages to which the consumer would be entitled under law; or

(2) order the registrant to cease and desist from the actions found to be in violation of law.

(b) A registrant may appeal an order issued under this section. The appeal is a contested case governed by Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.

Sec. 158.104. MULTI-STATE EXAMINATION AUTHORITY. To ensure that residential mortgage loan servicers to whom this chapter applies operate in this state in compliance with this chapter and with other law in accordance with this chapter, the commissioner or the commissioner's designee may participate in multi-state mortgage examinations as scheduled by the Conference of State Bank Supervisors Multi-State Mortgage Committee or by the Consumer Financial Protection Bureau in accordance with the protocol for such examinations.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 83, eff. September 1, 2013.

Sec. 158.1045. ISSUANCE AND ENFORCEMENT OF SUBPOENA. (a) During an investigation, the commissioner may issue a subpoena that is addressed to a peace officer of this state or other person authorized by law to serve citation or perfect service. The subpoena may require a person to give a deposition, produce documents, or both.

(b) If a person disobeys a subpoena or if a person appearing in a deposition in connection with the investigation refuses to testify, the commissioner may petition a district court in Travis County to issue an order requiring the person to obey the subpoena, testify, or produce documents relating to the matter. The court shall promptly set an application to enforce a subpoena issued under Subsection (a) for hearing and shall cause notice of the application and the hearing to be served on the person to whom the subpoena is directed.

Added by Acts 2017, 85th Leg., R.S., Ch. 168 (H.B. 2823), Sec. 1, eff. May 26, 2017.

Sec. 158.105. CEASE AND DESIST ORDER. (a) If the commissioner has reasonable cause to believe that a person who is not registered or exempt under this chapter has engaged, or is about to engage, in an act or practice for which registration is required under this chapter, the commissioner may issue without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter.

(b) An order issued under Subsection (a) must contain a reasonably detailed statement of the facts on which the order is issued.

(c) If, not later than the 30th day after the date an order is issued under this section, the person against whom the order is made requests a hearing, the commissioner shall set and give notice of a hearing before the commissioner or a hearings officer. The hearing shall be governed by Chapter 2001, Government Code.

(d) If a hearing is not requested under Subsection (c) not later than the 30th day after the date the order is issued, the order is considered final and not appealable.

(e) The commissioner, after giving notice, may impose against a person who violates a cease and desist order an administrative

penalty in an amount not to exceed $2,500 for each day of the violation. In addition to any other remedy provided by law, the commissioner may institute in district court a suit for injunctive relief and to collect the administrative penalty. A bond is not required of the commissioner with respect to injunctive relief granted under this subsection.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.

Sec. 158.106. RESTITUTION. The commissioner may order a residential mortgage loan servicer to pay to a complainant any compensation received by the servicer in a violation cited by the commissioner in a final order.

Added by Acts 2011, 82nd Leg., R.S., Ch. 588 (S.B. 17), Sec. 1, eff. September 1, 2011.

CHAPTER 180. RESIDENTIAL MORTGAGE LOAN ORIGINATORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 180.001. SHORT TITLE. This chapter may be cited as the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Sec. 180.002. DEFINITIONS. In this chapter:

(1) "Clerical or support duties," following the receipt of an application from a consumer, includes:

(A) the receipt, collection, distribution, and analysis of information related to the processing or underwriting of a residential mortgage loan; and

(B) communication with a consumer to obtain information necessary to process or underwrite a loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling the consumer about residential mortgage loan rates or terms.

(2) "Credit union" means a state or federal credit union

operating in this state.

(3) "Credit union subsidiary organization" means an agency, association, or company wholly or partly owned by a credit union that is designed primarily to serve or otherwise assist credit union operations. The term includes a credit union service organization authorized by:

(A) Section 124.351(a)(1);

(B) Credit Union Commission rule; or

(C) Part 712 of the National Credit Union Administration's Rules and Regulations.

(4) "Depository institution" has the meaning assigned by Section 3, Federal Deposit Insurance Act (12 U.S.C. Section 1813). The term includes a credit union but does not include a credit union subsidiary organization.

(5) "Dwelling" has the meaning assigned by Section 103(v) of the Truth in Lending Act (15 U.S.C. Section 1602(v)).

(6) "Federal banking agency" means:

(A) the Board of Governors of the Federal Reserve System;

(B) the Office of the Comptroller of the Currency;

(C) the Office of Thrift Supervision;

(D) the National Credit Union Administration;

(E) the Federal Deposit Insurance Corporation; or

(F) the successor of any of those agencies.

(7) "Finance commission" means the Finance Commission of Texas.

(8) "Immediate family member" means the spouse, child, sibling, parent, grandparent, or grandchild of an individual. The term includes a stepparent, stepchild, and stepsibling and a relationship established by adoption.

(9) "Individual" means a natural person.

(10) "License" means a license issued under the laws of this state to an individual acting as or engaged in the business of a residential mortgage loan originator.

(11) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of an individual licensed as a residential mortgage loan originator or exempt from licensure under Section 180.003.

(12) "Nationwide Mortgage Licensing System and Registry"

means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of state residential mortgage loan originators.

(13) "Nontraditional mortgage product" means a mortgage product other than a 30-year fixed rate mortgage.

(14) "Person" means an individual, corporation, company, limited liability company, partnership, or association.

(15) "Real estate brokerage activity" means an activity that involves offering or providing real estate brokerage services to the public, including:

(A) acting as a real estate broker or salesperson for a buyer, seller, lessor, or lessee of real property;

(B) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) negotiating, on a party's behalf, any provision of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than a negotiation conducted in connection with providing financing with respect to such a transaction;

(D) engaging in an activity for which a person is required to be registered or licensed by the state as a real estate broker or salesperson; and

(E) offering to engage in an activity described by Paragraphs (A) through (D) or to act in the same capacity as a person described by Paragraphs (A) through (D).

(16) "Registered mortgage loan originator" means an individual who:

(A) is a residential mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is:

(a) owned and controlled by a depository institution; and

(b) regulated by a federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(17) "Regulatory official" means:

(A) with respect to Subtitles A, F, and G of this title, the banking commissioner of Texas;

(B) with respect to Chapters 156 and 157, the savings and mortgage lending commissioner; and

(C) with respect to Chapters 342, 347, 348, and 351, the consumer credit commissioner.

(18) "Residential mortgage loan" means a loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate.

(19) "Residential mortgage loan originator":

(A) means an individual who for compensation or gain or in the expectation of compensation or gain:

(i) takes a residential mortgage loan application; or

(ii) offers or negotiates the terms of a residential mortgage loan; and

(B) does not include:

(i) an individual who performs solely administrative or clerical tasks on behalf of an individual licensed as a residential mortgage loan originator or exempt from licensure under Section 180.003, except as otherwise provided by Section 180.051;

(ii) an individual who performs only real estate brokerage activities and is licensed or registered by the state as a real estate broker or salesperson, unless the individual is compensated by:

(a) a lender or other residential mortgage loan originator; or

(b) an agent of a lender or other residential mortgage loan originator;

(iii) an individual licensed under Chapter 1201, Occupations Code, unless the individual is directly compensated for arranging financing for activities regulated under that chapter by:

(a) a lender or other residential mortgage loan originator; or

(b) an agent of a lender or other residential mortgage loan originator;

(iv) an individual who receives the same benefits from a financed transaction as the individual would receive if the

transaction were a cash transaction; or

(v) an individual who is involved solely in providing extensions of credit relating to timeshare plans, as defined by 11 U.S.C. Section 101(53D).

(20) "Residential real estate" means real property located in this state on which a dwelling is constructed or intended to be constructed.

(21) "Rulemaking authority" means the finance commission.

(22) "S.A.F.E. Mortgage Licensing Act" means the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

(23) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 60, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 84, eff. September 1, 2013.

Sec. 180.003. EXEMPTION. (a) The following persons are exempt from this chapter:

(1) a registered mortgage loan originator when acting for an entity described by Section 180.002(16)(A)(i), (ii), or (iii);

(2) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney:

(A) takes a residential mortgage loan application; and

(B) offers or negotiates the terms of a residential mortgage loan;

(4) an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the

individual's residence;

(5) an owner of residential real estate who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured; and

(6) an owner of a dwelling who in any 12-consecutive-month period makes no more than five residential mortgage loans to purchasers of the property for all or part of the purchase price of the dwelling against which the mortgage or security interest is secured.

(b) An individual is exempt from this chapter, other than Section 180.171, if the individual:

(1) in any 12-consecutive-month period originates five or fewer closed residential mortgage loans exclusively for a single federally chartered depository institution and the loans are closed within that period;

(2) is contractually prohibited from soliciting, processing, negotiating, or placing a residential mortgage loan with a person other than the depository institution described by Subdivision (1); and

(3) is sponsored by a life insurance company, or an affiliate of the company, authorized to engage in business in this state.

(c) The finance commission may grant an exemption from the licensing requirements of this chapter to a municipality, county, community development corporation, or public or private grant administrator to the extent the entity is administering the Texas HOME Investment Partnerships program if the commission determines that granting the exemption is not inconsistent with the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 61, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 258 (S.B. 1203), Sec. 3, eff. September 1, 2015.

Sec. 180.004. ADMINISTRATIVE AUTHORITY; RULEMAKING. (a) A regulatory official has broad authority to administer, interpret, and enforce this chapter.

(b) The finance commission may implement rules necessary to comply with this chapter and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

(c) This chapter does not limit the authority of a regulatory official to take disciplinary action against a license holder for a violation of this chapter or the rules adopted by the regulatory official under this chapter. A regulatory official has broad authority to investigate, revoke a license, and inform the proper authority when fraudulent conduct or a violation of this chapter occurs.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Sec. 180.005. SEVERABILITY. The provisions of this chapter or applications of those provisions are severable as provided by Section 311.032(c), Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

SUBCHAPTER B. LICENSING AND REGISTRATION REQUIREMENTS

Sec. 180.051. STATE LICENSE REQUIRED; RENEWAL. (a) Unless exempted by Section 180.003 or acting under the temporary authority described under Section 180.0511, an individual may not engage in business as a residential mortgage loan originator with respect to a dwelling located in this state unless the individual:

(1) is licensed to engage in that business under Chapter 156, 157, 342, 347, 348, or 351; and

(2) complies with the requirements of this chapter.

(b) Unless exempted by Section 180.003, a loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless the independent

contractor loan processor or underwriter obtains and maintains the appropriate residential mortgage loan originator license and complies with the requirements of this chapter.

(c) The individual must renew the license annually to be considered licensed for purposes of this section.

(d) Notwithstanding any provision of law listed in Subsection (a)(1), the regulatory official shall provide for annual renewal of licenses for individuals seeking to engage in residential mortgage loan origination activities.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 695 (S.B. 2330), Sec. 2, eff. November 24, 2019.

Sec. 180.0511. TEMPORARY AUTHORITY TO ORIGINATE LOANS. (a) A registered mortgage loan originator who does not hold a license issued under a chapter listed in Section 180.051(a)(1) is considered to have temporary authority to act as a residential mortgage loan originator for a period not to exceed 120 days as provided by Subsection (d) if the individual:

(1) becomes employed by an entity that is licensed or registered by this state to engage in the business of residential mortgage loan origination in this state;

(2) has not had:

(A) an application for a residential mortgage loan originator license or other loan originator license required by another jurisdiction to engage in business as a residential mortgage loan originator denied; or

(B) a residential mortgage loan originator license or other loan originator license required by another jurisdiction to engage in business as a residential mortgage loan originator revoked or suspended in any governmental jurisdiction;

(3) has not been subject to or served with a cease and desist order:

(A) in any governmental jurisdiction; or

(B) under 12 U.S.C. Section 5113(c);

(4) has not been convicted of a misdemeanor or felony that

would preclude licensure to engage in business as a residential mortgage loan originator in this state under the chapters listed in Section 180.051(a)(1);

(5) has submitted to the appropriate regulatory official the application form prescribed by the regulatory official under Section 180.053 and the information required under Section 180.054; and

(6) was registered in the Nationwide Mortgage Licensing System and Registry as a loan originator during the one-year period preceding the date on which the individual submitted to the appropriate regulatory official the application form and information required by Subdivision (5).

(b) An individual licensed by another state or governmental jurisdiction to engage in mortgage loan origination in that other state or governmental jurisdiction is considered to have temporary authority to act as a residential mortgage loan originator in this state for a period not to exceed 120 days as provided by Subsection (d) if the individual:

(1) is employed by an entity that is licensed or registered by this state to engage in the business of residential mortgage loan origination in this state;

(2) meets the eligibility requirements provided by Subsections (a)(2), (3), (4), and (5); and

(3) held the license issued by another state or governmental jurisdiction to engage in mortgage loan origination during the 30-day period preceding the date on which the individual submitted to the appropriate regulatory official the application form required under Section 180.053 and the information required under Section 180.054.

(c) A residential mortgage loan originator licensed by a regulatory official to engage in business as a mortgage loan originator in this state under a chapter listed in Section 180.051(a)(1) is considered to have temporary authority to act as a residential mortgage loan originator under a different chapter listed in Section 180.051(a)(1) for a period not to exceed 120 days as provided by Subsection (d) if the individual:

(1) is employed by an entity that is licensed or registered by this state to engage in the business of residential mortgage loan origination in this state;

(2) meets the eligibility requirements provided by

Subsections (a)(2), (3), (4), and (5); and

(3) held the license issued by the regulatory official to engage in business as a residential mortgage loan originator during the 30-day period preceding the date on which the individual submitted to the appropriate regulatory official the application form required under Section 180.053 and the information required under Section 180.054.

(d) The 120-day period of temporary authority described under this section begins on the date on which the individual submits to the appropriate regulatory official the application form required under Section 180.053 and the information required under Section 180.054 and ends on the earliest of:

(1) the date on which the individual withdraws the application;

(2) the date on which the regulatory official denies or issues a notice of intent to deny the application;

(3) the date on which the regulatory official issues the individual a license; or

(4) the 120th day after the date on which the individual submitted the application, if the application is listed on the Nationwide Mortgage Licensing System and Registry as incomplete.

(e) A person employing an individual who is considered to have temporary authority to act as a residential mortgage loan originator in this state under this section is subject to the requirements of applicable federal and state laws and to applicable rules and regulations to the same extent as if that individual was a residential mortgage loan originator licensed by this state.

(f) An individual who is considered to have temporary authority to act as a residential mortgage loan originator in this state under this section and who engages in residential mortgage loan origination activities is subject to the requirements of applicable federal and state laws and to applicable rules and regulations to the same extent as if that individual was a residential mortgage loan originator licensed by this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 695 (S.B. 2330), Sec. 3, eff. November 24, 2019.

Sec. 180.052. ENROLLMENT OR REGISTRATION WITH NATIONWIDE

MORTGAGE LICENSING SYSTEM AND REGISTRY. (a) A licensed residential mortgage loan originator must enroll with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(b) A non-federally insured credit union that employs loan originators, as defined by the S.A.F.E. Mortgage Licensing Act, shall register those employees with the Nationwide Mortgage Licensing System and Registry by furnishing the information relating to the employees' identity set forth in Section 1507(a)(2) of the S.A.F.E. Mortgage Licensing Act.

(c) Each independent contractor loan processor or underwriter licensed as a residential mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(d) The regulatory official who administers the law under which a residential mortgage loan originator is licensed shall require the residential mortgage loan originator to be enrolled with the Nationwide Mortgage Licensing System and Registry.

(e) For purposes of implementing Subsection (d), the regulatory official may participate in the Nationwide Mortgage Licensing System and Registry.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Sec. 180.053. APPLICATION FORM. (a) A regulatory official shall prescribe application forms for a license as a residential mortgage loan originator.

(b) A regulatory official may change or update an application form as necessary to carry out the purposes of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Sec. 180.054. CRIMINAL AND OTHER BACKGROUND CHECKS. (a) In connection with an application for a license as a residential mortgage loan originator, the applicant shall, at a minimum, furnish in the form and manner prescribed by the regulatory official and acceptable to the Nationwide Mortgage Licensing System and Registry

information concerning the applicant's identity, including:

(1) fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive the information to conduct a state, national, and international criminal background check; and

(2) personal history and experience information in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the appropriate regulatory official to obtain:

(A) an independent credit report obtained from a consumer reporting agency described by Section 603(p), Fair Credit Reporting Act (15 U.S.C. Section 1681a(p)); and

(B) information related to any administrative, civil, or criminal findings by a governmental jurisdiction.

(b) For purposes of this section and to reduce the points of contact that the Federal Bureau of Investigation may have to maintain for purposes of Subsection (a)(1), a regulatory official may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice, any governmental agency, or any source at the regulatory official's direction.

(c) For purposes of this section and to reduce the points of contact that a regulatory official may have to maintain for purposes of Subsection (a) or (b), the regulatory official may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to and from any source as directed by the regulatory official.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Sec. 180.055. ISSUANCE OF LICENSE. (a) The regulatory official may not issue a residential mortgage loan originator license to an individual unless the regulatory official determines, at a minimum, that the applicant:

(1) has not had a residential mortgage loan originator license revoked in any governmental jurisdiction;

(2) has not been convicted of, or pled guilty or nolo

contendere to, a felony in a domestic, foreign, or military court:

(A) during the seven-year period preceding the date of application; or

(B) at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering;

(3) demonstrates financial responsibility, character, and general fitness so as to command the confidence of the community and to warrant a determination that the individual will operate honestly, fairly, and efficiently as a residential mortgage loan originator within the purposes of this chapter and any other appropriate regulatory law of this state;

(4) provides satisfactory evidence that the applicant has completed prelicensing education courses described by Section 180.056;

(5) provides satisfactory evidence of having passed a written test that meets the requirements of Section 180.057; and

(6) has paid a recovery fund fee or obtained a surety bond as required under the appropriate state regulatory law.

(b) A revocation that has been formally vacated may not be considered a license revocation for purposes of Subsection (a)(1).

(c) A conviction for which a full pardon has been granted may not be considered a conviction for purposes of Subsection (a)(2).

(d) For purposes of Subsection (a)(3), an individual is considered not to be financially responsible if the individual has shown a lack of regard in managing the individual's own financial affairs or condition. A determination that an individual has not shown financial responsibility may not be based on the individual's default on a student loan but may include:

(1) an outstanding judgment against the individual, other than a judgment imposed solely as a result of medical expenses;

(2) an outstanding tax lien or other governmental liens and filings;

(3) a foreclosure during the three-year period preceding the date of the license application; and

(4) a pattern of seriously delinquent accounts, other than student loan accounts, during the three-year period preceding the date of the application.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff.

June 19, 2009.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 506 (S.B. 37), Sec. 5, eff. June 7, 2019.

Sec. 180.056. PRELICENSING EDUCATIONAL COURSES. (a) An applicant for a residential mortgage loan originator license must complete education courses that include at least the minimum number of hours and type of courses required by the S.A.F.E. Mortgage Licensing Act and the minimum number of hours of training related to lending standards for the nontraditional mortgage product marketplace required by that Act and any additional requirements established by the regulatory official and adopted by rule of the rulemaking authority.

(b) Education courses required under this section must be reviewed and approved by the Nationwide Mortgage Licensing System and Registry in accordance with the S.A.F.E. Mortgage Licensing Act.

(c) Nothing in this section precludes any education course approved in accordance with the S.A.F.E. Mortgage Licensing Act from being provided by:

(1) an applicant's employer;

(2) an entity affiliated with the applicant by an agency contract; or

(3) a subsidiary or affiliate of the employer or entity.

(d) Education courses required under this section may be offered in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) An individual who has successfully completed prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry for another state shall be given credit toward completion of the prelicensing education requirements of this section.

(f) An applicant who has previously held a residential mortgage loan originator license that meets the requirements of this chapter and other appropriate regulatory law, before being issued a new original license, must demonstrate to the appropriate regulatory official that the applicant has completed all continuing education requirements for the calendar year in which the license was last held by the applicant.

(g) If the appropriate federal regulators and the Nationwide Mortgage Licensing System and Registry establish additional educational requirements for licensed residential mortgage loan originators, the rulemaking authority shall adopt necessary rules to implement the changes to the educational requirements of this section.

(h) An individual who fails to maintain a residential mortgage loan originator license for the period of time established by rule of the rulemaking authority must retake the prelicensing education requirements prescribed by the S.A.F.E. Mortgage Licensing Act.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 62, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 85, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 704 (H.B. 3342), Sec. 1, eff. January 1, 2018.

Sec. 180.057. TESTING REQUIREMENTS. (a) An applicant for a residential mortgage loan originator license must pass a qualified, written test that:

(1) meets the standards and requirements established by the S.A.F.E. Mortgage Licensing Act;

(2) is developed by the Nationwide Mortgage Licensing System and Registry; and

(3) is administered by a test provider in accordance with the S.A.F.E. Mortgage Licensing Act.

(b) An individual may retake the test the number of times and within the period prescribed by the S.A.F.E. Mortgage Licensing Act.

(c) An individual who fails to maintain a residential mortgage loan originator license for at least five consecutive years must retake the test.

(d) This section does not prohibit a test provider approved in accordance with the S.A.F.E. Mortgage Licensing Act from providing a test at the location of:

(1) the license applicant's employer;

(2) a subsidiary or affiliate of the applicant's employer; or

(3) an entity with which the applicant holds an exclusive arrangement to conduct the business of a residential mortgage loan originator.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Sec. 180.058. RECOVERY FUND FEE OR SURETY BOND REQUIREMENT. (a) A regulatory official may not issue a residential mortgage loan originator license unless the official determines that the applicant meets the surety bond requirement or has paid a recovery fund fee, as applicable, in accordance with the requirements of the S.A.F.E. Mortgage Licensing Act.

(b) Each regulatory official shall adopt rules requiring an individual licensed as a residential mortgage loan originator to obtain a surety bond or pay a recovery fund fee as the official determines appropriate to comply with the S.A.F.E. Mortgage Licensing Act.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Sec. 180.059. STANDARDS FOR LICENSE RENEWAL. A license to act as a residential mortgage loan originator may be renewed on or before its expiration date if the license holder:

(1) continues to meet the minimum requirements for license issuance;

(2) pays all required fees for the renewal of the license; and

(3) provides satisfactory evidence that the license holder has completed the continuing education requirements of Section 180.060.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Sec. 180.060. CONTINUING EDUCATION COURSES. (a) To renew a residential mortgage loan originator license, a license holder must annually complete the minimum number of hours and type of continuing education courses required by the S.A.F.E. Mortgage Licensing Act, the minimum requirements established by the Nationwide Mortgage Licensing System and Registry, and any additional requirements established by the regulatory official.

(b) Continuing education courses, including the course provider, must be reviewed and approved by the Nationwide Mortgage Licensing System and Registry as required by the S.A.F.E. Mortgage Licensing Act. Course credit must be granted in accordance with that Act.

(c) Nothing in this section precludes any continuing education course approved in accordance with the S.A.F.E. Mortgage Licensing Act from being provided by:

(1) the employer of the license holder;

(2) an entity affiliated with the license holder by an agency contract; or

(3) a subsidiary or affiliate of the employer or entity.

(d) A person who successfully completes continuing education requirements approved by the Nationwide Mortgage Licensing System and Registry for another state shall be given credit toward completion of the continuing education requirements of this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Sec. 180.061. RULEMAKING AUTHORITY. A rulemaking authority may adopt rules establishing requirements as necessary for:

(1) conducting background checks by obtaining:

(A) criminal history information through fingerprint or other databases;

(B) civil administrative records;

(C) credit history information; or

(D) any other information considered necessary by the Nationwide Mortgage Licensing System and Registry;

(2) payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry;

(3) setting or resetting, as necessary, license renewal

dates or reporting periods;

(4) amending or surrendering a license or any other activity a regulatory official considers necessary for participation in the Nationwide Mortgage Licensing System and Registry; and

(5) investigation and examination authority for purposes of investigating a violation or complaint arising under this chapter or for purposes of examining, reviewing, or investigating any license holder or individual subject to this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Sec. 180.062. CONFIDENTIALITY OF INFORMATION. (a) Except as otherwise provided by this section, a requirement under federal or state law regarding the privacy or confidentiality of information or material provided to the Nationwide Mortgage Licensing System and Registry, and a privilege arising under federal or state law, or under the rules of a federal or state court, continue to apply to the information or material after the disclosure of the information or material to the Nationwide Mortgage Licensing System and Registry. The information and material may be shared with federal and state regulatory officials with mortgage industry oversight authority without the loss of any privilege or confidentiality protections afforded by federal or state laws.

(b) Information or material subject to a privilege or confidential under Subsection (a) may not be subject to:

(1) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or this state; or

(2) subpoena, discovery, or admission into evidence in a private civil action or administrative proceeding.

(c) A person who is the subject of information or material in the Nationwide Mortgage Licensing System and Registry may waive, wholly or partly, any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to the information or material.

(d) A regulatory official may enter into an agreement or sharing arrangement with another governmental agency, the Conference of State Bank Supervisors, the American Association of Residential

Mortgage Regulators, or other associations representing appropriate governmental agencies as established by rule of the rulemaking authority or order issued by the regulatory official. A protection provided by Subsection (a) also applies to information and material shared under an agreement or sharing arrangement entered into under this subsection.

(e) To the extent of a conflict between Subsection (a) and Chapter 552, Government Code, or another state law relating to the disclosure of confidential information or information or material described by Subsection (a), Subsection (a) controls to the extent Chapter 552, Government Code, or the other law provides less confidentiality or a weaker privilege than is provided by Subsection (a).

(f) This section does not apply to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a residential mortgage loan originator that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

SUBCHAPTER C. REPORTING AND OTHER REQUIREMENTS REGARDING NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY

Sec. 180.101. MORTGAGE CALL REPORTS. Each licensed residential mortgage loan originator shall submit to the Nationwide Mortgage Licensing System and Registry a report of condition that is in the form and contains the information required by the Nationwide Mortgage Licensing System and Registry.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Sec. 180.102. REPORT OF VIOLATIONS AND ENFORCEMENT ACTIONS. Subject to the confidentiality provisions of this chapter, a regulatory official shall report to the Nationwide Mortgage Licensing System and Registry on a regular basis regarding violations of, enforcement actions under, or information relevant to this chapter or the S.A.F.E. Mortgage Licensing Act under the regulatory official's

licensure, regulation, or examination of a licensed residential mortgage loan originator or person registered under the S.A.F.E. Mortgage Licensing Act.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Sec. 180.103. INFORMATION CHALLENGE PROCESS. The applicable rulemaking authority by rule shall establish a process by which licensed residential mortgage loan originators may dispute information submitted by the regulatory official to the Nationwide Mortgage Licensing System and Registry.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

SUBCHAPTER D. BUSINESS PRACTICES; PROHIBITED ACTS

Sec. 180.151. DISPLAY OF UNIQUE IDENTIFIER. The unique identifier of a person originating a residential mortgage loan must be clearly shown on each residential mortgage loan application form, solicitation, or advertisement, including business cards and websites, and any other document required by rule of the rulemaking authority.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Sec. 180.152. REPRESENTATIONS. An individual who is engaged exclusively in loan processor or underwriter activities may not represent to the public, through the use of advertising, business cards, stationery, brochures, signs, rate lists, or other means, that the individual can or will perform any of the activities of a residential mortgage loan originator unless the individual is licensed as a residential mortgage loan originator.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Sec. 180.153. PROHIBITED ACTS AND PRACTICES. An individual or other person subject to regulation under this chapter may not:

(1) employ, directly or indirectly, a scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud a person;

(2) engage in an unfair or deceptive practice toward a person;

(3) obtain property by fraud or misrepresentation;

(4) solicit or enter into a contract with a borrower that provides in substance that the individual or other person subject to this chapter may earn a fee or commission through "best efforts" to obtain a loan even though no loan was actually obtained for the borrower;

(5) solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(6) conduct any business regulated by this chapter without holding a license as required by this chapter;

(7) assist, aid, or abet an individual in the conduct of business without a license required by this chapter;

(8) fail to make disclosures as required by this chapter and any other applicable state or federal law, including rules or regulations under applicable state or federal law;

(9) fail to comply with this chapter or rules adopted under this chapter;

(10) fail to comply with any other state or federal law, including rules or regulations adopted under that law, applicable to a business or activity regulated by this chapter;

(11) make, in any manner, a false or deceptive statement or representation;

(12) negligently make a false statement or knowingly or wilfully make an omission of material fact in connection with:

(A) information or a report filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry; or

(B) an investigation conducted by the regulatory official or another governmental agency;

(13) make a payment, threat, or promise, directly or indirectly, to a person for purposes of influencing the person's independent judgment in connection with a residential mortgage loan,

or make a payment, threat, or promise, directly or indirectly, to an appraiser of property, for purposes of influencing the appraiser's independent judgment with respect to the property's value;

(14) collect, charge, attempt to collect or charge, or use or propose an agreement purporting to collect or charge a fee prohibited by this chapter;

(15) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer; or

(16) fail to truthfully account for money belonging to a party to a residential mortgage loan transaction.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

SUBCHAPTER D-1. REQUIREMENT FOR INDIVIDUALS ORIGINATING RESIDENTIAL MORTGAGE LOANS EXCLUSIVELY FOR CERTAIN DEPOSITORY INSTITUTION

Sec. 180.171. ENROLLMENT WITH DEPARTMENT OF SAVINGS AND MORTGAGE LENDING. (a) This section applies only to an individual who:

(1) in any 12-consecutive-month period originates five or fewer residential mortgage loans exclusively for a single federally chartered depository institution and the loans are closed within that period;

(2) is contractually prohibited from soliciting, processing, negotiating, or placing a residential mortgage loan with a person other than the depository institution described by Subdivision (1); and

(3) is sponsored by a life insurance company, or an affiliate of the company, authorized to engage in business in this state.

(b) Before conducting business in this state with respect to a residential mortgage loan, an individual to whom this section applies must enroll as a financial exclusive agent with the Department of Savings and Mortgage Lending until the time any registration with the Nationwide Mortgage Licensing System and Registry is required for the individual by federal law or regulation and a suitable category is created for that registration with that nationwide registry.

(c) An enrollment under this section must be renewed annually.

(d) An individual required under this section to enroll as a financial exclusive agent shall pay to the savings and mortgage lending commissioner an annual fee in an amount not to exceed $40 as prescribed by the commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 63, eff. November 1, 2011.

SUBCHAPTER E. ENFORCEMENT PROVISIONS

Sec. 180.201. ENFORCEMENT AUTHORITY. To ensure the effective supervision and enforcement of this chapter, a regulatory official may:

(1) deny, suspend, revoke, condition, or decline to renew a license for a violation of this chapter, a rule adopted under this chapter, or an order or directive issued under this chapter;

(2) deny, suspend, revoke, condition, or decline to renew a license if an applicant or license holder:

(A) fails to meet the requirements of Subchapter B; or

(B) withholds information or makes a material misstatement in an application for a license or renewal of a license;

(3) order restitution against a person subject to regulation under this chapter for a violation of this chapter;

(4) impose an administrative penalty on a person subject to regulation under this chapter, subject to Section 180.202; or

(5) issue orders or directives as provided by Section 180.203.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Sec. 180.202. ADMINISTRATIVE PENALTY. (a) A regulatory official may impose an administrative penalty on a residential mortgage loan originator or other person subject to regulation under this chapter, if the official, after notice and opportunity for hearing, determines that the residential mortgage loan originator or other person subject to regulation under this chapter has violated or failed to comply with:

(1) this chapter;

(2) a rule adopted under this chapter; or

(3) an order issued under this chapter.

(b) The penalty may not exceed $25,000 for each violation.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm to property caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Sec. 180.203. CEASE AND DESIST ORDERS. A regulatory official may:

(1) order or direct a person subject to regulation under this chapter to cease and desist from conducting business, including issuing an immediate temporary order to cease and desist from conducting business;

(2) order or direct a person subject to regulation under this chapter to cease a violation of this chapter or a harmful activity in violation of this chapter, including issuing an immediate temporary order to cease and desist;

(3) enter immediate temporary orders against a person subject to regulation under this chapter to cease engaging in business under a license if the regulatory official determines that the license was erroneously granted or the license holder is in violation of this chapter; and

(4) order or direct other affirmative action as the regulatory official considers necessary.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

SUBCHAPTER F. DUTIES OF REGULATORY OFFICIALS

Sec. 180.251. GENERAL DUTIES OF REGULATORY OFFICIALS. (a) The savings and mortgage lending commissioner shall administer and enforce this chapter with respect to individuals licensed under

Chapter 157.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 160, Sec. 87(9), eff. September 1, 2013.

(c) The consumer credit commissioner shall administer and enforce this chapter with respect to individuals licensed under Chapter 342, 347, 348, or 351.

(d) To the extent permitted or required by this chapter and as reasonably necessary for the implementation and enforcement of the S.A.F.E. Mortgage Licensing Act, the banking commissioner of Texas may administer and enforce this chapter with respect to a person otherwise under the commissioner's jurisdiction under Subtitle A, F, or G of this title.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 86, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 160 (S.B. 1004), Sec. 87(9), eff. September 1, 2013.

Sec. 180.252. AUTHORITY OF REGULATORY OFFICIALS TO ESTABLISH RELATIONSHIP WITH NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY; CONTRACTING AUTHORITY. To fulfill the purposes of this chapter, a regulatory official may establish a relationship with or contract with the Nationwide Mortgage Licensing System and Registry or an entity designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensed residential mortgage loan originators or other persons subject to regulation under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 1, eff. June 19, 2009.

SUBTITLE F. TRUST COMPANIES

CHAPTER 181. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 181.001. SHORT TITLE. This subtitle may be cited as the

Texas Trust Company Act.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 181.002. DEFINITIONS. (a) In this subtitle:

(1) "Account" means the client relationship established with a trust institution involving the transfer of funds or property to the trust institution, including a relationship in which the trust institution acts as trustee, executor, administrator, guardian, custodian, conservator, receiver, registrar, or agent.

(2) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with a state trust company or other company.

(3) Repealed by Acts 2001, 77th Leg., ch. 1420, Sec. 6.027, eff. Sept. 1, 2001.

(4) "Banking commissioner" means the banking commissioner of Texas or a person designated by the banking commissioner and acting under the banking commissioner's direction and authority.

(5) "Board" means the board of directors, managers, or managing participants of, or a person or group of persons acting in a comparable capacity for, a state trust company or other entity.

(6) Repealed by Acts 2001, 77th Leg., ch. 1420, Sec. 6.027, eff. Sept. 1, 2001.

(7) "Capital" means:

(A) the sum of:

(i) the par value of all shares or participation shares of a state trust company having a par value that have been issued;

(ii) the consideration set by the board for all shares or participation shares of the state trust company without par value that have been issued, except the part of that consideration that:

(a) has been actually received;

(b) is less than all of that consideration; and

(c) the board, by resolution adopted not later than the 60th day after the date of issuance of those shares, has allocated to surplus with the prior approval of the banking commissioner; and

(iii) an amount not included in Subparagraphs (i) and (ii) that has been transferred to capital of the state trust company, on the payment of a share dividend or on adoption by the board of a resolution directing that all or part of surplus be transferred to capital, minus each reduction made as permitted by law; less

(B) all amounts otherwise included in Paragraphs (A)(i) and (ii) that are attributable to the issuance of securities by the state trust company and that the banking commissioner determines, after notice and an opportunity for hearing, should be classified as debt rather than equity securities.

(8) "Certified surplus" means the part of surplus designated by a vote of the board of a state trust company under Section 182.105 and recorded in the board minutes as certified.

(9) "Charter" means a charter issued under this subtitle to engage in a trust business.

(10) "Client" means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution, regardless of whether the trust institution owes a fiduciary duty to the person. The term includes a beneficiary of a trust for whom the trust institution acts as trustee and a person for whom the trust institution acts as agent, custodian, or bailee.

(11) "Company" means a corporation, a partnership, an association, a business trust, another trust, or a similar organization, including a trust institution.

(12) "Conservator" means the banking commissioner or an agent of the banking commissioner exercising the powers and duties provided by Subchapter B, Chapter 185.

(13) "Control" means:

(A) the ownership of or ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, 25 percent or more of the outstanding shares of a class of voting securities of a state trust company or other company;

(B) the ability to control the election of a majority of the board of the state trust company or other company;

(C) the power to exercise, directly or indirectly, a controlling influence over the management or policies of the state trust company or other company as determined by the banking commissioner after notice and an opportunity for hearing; or

(D) the conditioning of the transfer of 25 percent or more of the outstanding shares or participation shares of a class of voting securities of the state trust company or other company on the transfer of 25 percent or more of the outstanding shares of a class of voting securities of another state trust company or other company.

(14) "Department" means the Texas Department of Banking.

(15) "Depository institution" means an entity with the power to accept deposits under applicable law.

(15-a) "Equity capital" means the amount by which the total assets of a state trust company exceed the total liabilities of the trust company.

(16) Repealed by Acts 2001, 77th Leg., ch. 1420, Sec. 6.027, eff. Sept. 1, 2001.

(17) "Equity security" means:

(A) stock or a similar security, any security convertible, with or without consideration, into such a security, a warrant or right to subscribe to or purchase such a security, or a security carrying such a warrant or right;

(B) a certificate of interest or participation in a profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share or participation share, investment contract, voting-trust certificate, or partnership interest; and

(C) a certificate of interest or participation in, temporary or interim certificate for, or receipt for a security described by this subdivision that evidences an existing or contingent equity ownership interest.

(18) "Fiduciary record" means a matter written, transcribed, recorded, received, or otherwise in the possession of a trust institution that is necessary to preserve information concerning an act or event relevant to an account of a trust institution.

(19) "Finance commission" means the Finance Commission of Texas.

(20) Repealed by Acts 2001, 77th Leg., ch. 1420, Sec. 6.027, eff. Sept. 1, 2001.

(21) "Full liability participant" means a participant that agrees under the terms of a participation agreement to be liable under a judgment, decree, or order of court for the entire amount of all debts, obligations, or liabilities of a limited trust

association.

(22) "Hazardous condition" means:

(A) a refusal by a trust company or an affiliate of a trust company to permit an examination of its books, papers, accounts, records, or affairs by the banking commissioner as provided by Section 181.104;

(B) a violation by a trust company of a condition of its chartering or an agreement entered into between the trust company and the banking commissioner or the department; or

(C) a circumstance or condition in which an unreasonable risk of loss is threatened to clients or creditors of a trust company, excluding risk of loss to a client that arises as a result of the client's decisions or actions, but including a circumstance or condition in which a trust company:

(i) is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the book or fair market value of its assets exceeds its liabilities;

(ii) has equity capital less than the amount of restricted capital the trust company is required to maintain under Section 182.008, or has equity capital the adequacy of which is threatened, as determined under regulatory accounting principles;

(iii) has concentrated an excessive or unreasonable portion of its assets in a particular type or character of investment;

(iv) violates or refuses to comply with this subtitle, another statute or regulation applicable to trust companies, or a final and enforceable order of the banking commissioner;

(v) is in a condition that renders the continuation of a particular business practice hazardous to its clients and creditors; or

(vi) conducts business in an unsafe or unsound manner, including conducting business with:

(a) inexperienced or inattentive management;

(b) weak or potentially dangerous operating practices;

(c) infrequent or inadequate audits;

(d) administration of assets that is notably deficient in relation to the volume and character of or

responsibility for asset holdings;

(e) unsound administrative practices;

(f) frequent and uncorrected material occurrences of violations of law, including rules, or terms of the governing instruments; or

(g) a notable degree of conflicts of interest and engaging in self-dealing.

(23) "Home office" means a location registered with the banking commissioner as a state trust company's home office at which:

(A) the trust company does business;

(B) the trust company keeps its corporate books and records; and

(C) at least one executive officer of the trust company maintains an office.

(24) "Insider" means:

(A) each director, manager, managing participant, officer, and principal shareholder or participant of a state trust company;

(B) each affiliate of the state trust company and each director, officer, and employee of the affiliate;

(C) any person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the state trust company, whether or not the person has an official title or the officer is serving without salary or compensation; or

(D) each company controlled by a person described by Paragraph (A), (B), or (C).

(25) "Insolvent" means a circumstance or condition in which a state trust company:

(A) is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities;

(B) has equity capital that is 50 percent or less of the amount of restricted capital the trust company is required to maintain;

(C) fails to maintain deposit insurance for its deposits with the Federal Deposit Insurance Corporation or its successor, or fails to maintain adequate security for its deposits as provided by Section 184.301(c);

(D) sells or attempts to sell substantially all of its

assets or merges or attempts to merge substantially all of its assets or business with another entity other than as provided by Chapter 182; or

(E) attempts to dissolve or liquidate other than as provided by Chapter 186.

(26) "Investment security" means a marketable obligation evidencing indebtedness of a person in the form of a bond, note, debenture, or investment security.

(27) "Limited trust association" means a state trust company organized under this subtitle as a limited liability company, authorized to issue participation shares, and controlled by its participants.

(28) "Loans and extensions of credit" means direct or indirect advances of money by a state trust company to a person that are conditioned on the obligation of the person to repay the funds or that are repayable from specific property pledged by or on behalf of the person.

(29) "Manager" means a person elected to the board of a limited trust association.

(30) "Managing participant" means a participant in a limited trust association in which management has been retained by the participants.

(31) "Mutual funds" means equity securities of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.) and the Securities Act of 1933 (15 U.S.C. Section 77a et seq.). The term does not include money market funds.

(32) "Officer" means the presiding officer of the board, the principal executive officer, or another officer appointed by the board of a state trust company or other company, or a person or group of persons acting in a comparable capacity for the state trust company or other company.

(33) "Operating subsidiary" means a company for which a state trust company has the ownership, ability, or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than 50 percent of the outstanding shares of each class of voting securities or its equivalent of the company.

(34) "Participant" means an owner of a participation share in a limited trust association.

(35) "Participant-transferee" means a transferee of a

participation share who has not received the unanimous consent of all participants to be a participant, or who becomes a participant-transferee under Subchapter C, Chapter 183.

(36) "Participation agreement" means the instrument stating the agreement among the participants of a limited trust association relating to the rights and duties of the participants and participant-transferees, including allocations of income, loss, deduction, credit, distributions, liquidation rights, redemption rights, liabilities of participants, priority rights of participant-transferees to transfer participation shares, rights of participants to purchase participation shares of participant-transferees, the procedures for elections and voting by participants, and any other matter not prohibited by or inconsistent with this subtitle.

(37) "Participation shares" means the units into which the proprietary interests of a limited trust association are divided or subdivided by means of classes, series, relative rights, or preferences.

(38) "Principal shareholder" means a person who owns or has the ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, 10 percent or more of the outstanding shares or participation shares of any class of voting securities of a state trust company or other company.

(39) "Restricted capital" means the sum of capital and certified surplus.

(40) "Regulatory accounting principles" means generally accepted accounting principles as modified by rules adopted under:

(A) this subtitle; or

(B) an applicable federal statute or regulation.

(41) "Secondary capital" means the amount by which the assets of a state trust company exceed restricted capital, required by Section 182.008, and liabilities.

(42) "Shareholder" means an owner of a share in a state trust company.

(43) "Shares" means the units into which the proprietary interests of a state trust company are divided or subdivided by means of classes, series, relative rights, or preferences.

(44) "State bank" means a banking association or limited banking association organized or reorganized under Subtitle A, including an association organized under the laws of this state before September 1, 1997, with the express power to receive and

accept deposits and possessing other rights and powers granted by that subtitle expressly or by implication. The term does not include a savings association, savings bank, or credit union.

(45) "State trust company" or "trust company" means a trust association or limited trust association organized or reorganized under this subtitle, including an association organized under the laws of this state before September 1, 1997. If the context or circumstances require, the term includes a trust company organized under the laws of another state that lawfully maintains a trust office in this state in accordance with Chapter 187.

(46) "Subsidiary" means a state trust company or other company that is controlled by another person. The term includes a subsidiary of a subsidiary.

(47) "Supervisor" means the banking commissioner or an agent of the banking commissioner exercising the powers and duties specified in Subchapter B, Chapter 185.

(47-a) "Surplus" means the amount by which the assets of a state trust company exceed the company's liabilities, capital, and undivided profits.

(47-b) "Third-party service provider" means a person who performs activities relating to the trust business on behalf of a trust institution for the trust institution's customers or on behalf of another person directly engaged in providing financial services for the person's customers. The term:

(A) includes a person who:

(i) provides data processing services;

(ii) performs activities in support of the provision of financial services, including lending, transferring funds, fiduciary activities, trading activities, and deposit taking activities;

(iii) for the purpose of furnishing to third parties reports indicating a person's creditworthiness, credit standing, or credit capacity, regularly engages in the practice of assembling or evaluating, and maintaining, public record information and credit account information from persons who furnish that information regularly and in the ordinary course of business; or

(iv) provides Internet-related services, including web services, processing electronic bill payments, developing and maintaining mobile applications, system and software development and maintenance, and security monitoring; and

(B) does not include a provider of an interactive computer service or a general audience Internet or communications platform, except to the extent that the service or platform is specially designed or adapted for the trust business and activities relating to the trust business.

(48) "Trust association" means a trust company organized under this subtitle as a corporation, authorized to issue shares of stock, and controlled by its shareholders.

(49) "Trust business" means the business of a company holding itself out to the public as a fiduciary for hire or compensation to hold or administer accounts. The term includes:

(A) the business of a trustee or custodian of an individual retirement account described by Section 408(a), Internal Revenue Code of 1986; and

(B) the business of an administrator or servicer of individual retirement accounts described by Section 408(a), Internal Revenue Code of 1986, who makes the administrator's or servicer's services available to the public for hire or compensation.

(50) "Trust deposits" means client funds held by a trust institution and authorized to be deposited with itself as a permanent investment or pending investment, distribution, or payment of debts on behalf of the client.

(51) "Trust institution" means a bank, credit union, foreign bank, savings association, savings bank, or trust company that is authorized by its charter to conduct a trust business.

(52) "Unauthorized trust activity" means an act or practice within this state by a company without a charter, license, permit, registration, or other authority issued or granted by the banking commissioner or other appropriate regulatory authority for which such a charter, license, permit, registration, or other authority is required to conduct trust business.

(53) "Undivided profits" means the part of equity capital of a state trust company equal to the balance of its net profits, income, gains, and losses since the date of its formation minus subsequent distributions to shareholders or participants and transfers to surplus or capital under share dividends or appropriate board resolutions. The term includes amounts allocated to undivided profits as a result of a merger.

(54) "Voting security" means a share, participation share, or other evidence of proprietary interest in a state trust company or

other company that has as an attribute the right to vote or participate in the election of the board of the trust company or other company, regardless of whether the right is limited to the election of fewer than all of the board members. The term includes a security that is convertible or exchangeable into a voting security and a nonvoting participation share of a managing participant.

(b) The definitions provided by this section shall be liberally construed to accomplish the purposes of this subtitle.

(c) The finance commission by rule may adopt other definitions to accomplish the purposes of this subtitle.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 17, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 6.002(a), 6.027, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 65, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 11, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. 875), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 9, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. 1823), Sec. 7, eff. September 1, 2019.

Sec. 181.003. TRUST COMPANY RULES. (a) The finance commission may adopt rules to accomplish the purposes of this subtitle, including rules necessary or reasonable to:

(1) implement and clarify this subtitle;

(2) preserve or protect the safety and soundness of state trust companies;

(3) grant the same rights and privileges to state trust companies with respect to the exercise of fiduciary powers and the conducting of financial activities or activities incidental or complementary to financial activities that are or may be granted to a trust institution that maintains its principal office or a branch or trust office in this state;

(4) provide for recovery of the cost of maintenance and operation of the department and the cost of enforcing this subtitle through the imposition and collection of ratable and equitable fees for notices, applications, and examinations; and

(5) facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission.

(b) The presence or absence in this subtitle of a specific reference to rules regarding a particular subject does not enlarge or diminish the rulemaking authority conferred by this section.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 18, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 6.003(a), eff. Sept. 1, 2001.

Sec. 181.004. IMPLYING THAT PERSON IS TRUST COMPANY. (a) A person or company may not use in a business name or advertising the words "trust," "trust company," or any similar term or phrase, any word pronounced "trust" or "trust company," any foreign word that means "trust" or "trust company," or any term that tends to imply that the business is holding out to the public that it engages in the business of a fiduciary for hire unless the banking commissioner has approved the use in writing after finding that the use will not be misleading. This subsection does not prohibit an individual from engaging in the business of a fiduciary for compensation or from using the words "trust" or "trustee" for the purpose of identifying assets held or actions taken in an existing capacity.

(b) Subsection (a) does not apply to:

(1) a trust institution authorized under this subtitle to conduct a trust business in this state; or

(2) another entity organized under the laws of this state, another state, the United States, or a foreign sovereign state to the extent that:

(A) the entity is authorized under its charter or the laws of this state or the United States to use a term, word, character, ideogram, phonogram, or phrase prohibited by Subsection (a); and

(B) the entity is authorized by the laws of this state or the United States to conduct the activities in which the entity is

engaged in this state.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.004(a), eff. Sept. 1, 2001.

Sec. 181.005. LIABILITY OF TRUST COMPANY DIRECTORS AND PERSONNEL. (a) The provisions of the Business Organizations Code regarding liability, defenses, and indemnification of a director, officer, agent, or employee apply to a director, officer, agent, or employee of a state trust company in this state. Except as limited by those provisions, a disinterested director, manager, managing participant, officer, or employee of a state trust company may not be held personally liable in an action seeking monetary damages arising from the conduct of the state trust company's affairs unless the damages resulted from the gross negligence or wilful or intentional misconduct of the person during the person's term of office or service with the state trust company.

(b) A director, manager, managing participant, officer, or employee of a state trust company is disinterested with respect to a decision or transaction if:

(1) the person fully discloses any interest in the decision or transaction and does not participate in the decision or transaction; or

(2) the decision or transaction does not involve any of the following:

(A) personal profit for the person through dealing with the state trust company or usurping an opportunity of the trust company;

(B) buying or selling assets of the state trust company in a transaction in which the person has a direct or indirect pecuniary interest;

(C) dealing with another state trust company or other person in which the person is a director, manager, managing participant, officer, or employee or otherwise has a significant direct or indirect financial interest; or

(D) dealing with a family member of the person.

(c) A director, manager, managing participant, or officer who, in performing the person's duties and functions, acts in good faith

and reasonably believes that reliance is warranted is entitled to rely on information, including an opinion, report, financial statement or other type of statement or financial data, decision, judgment, or performance, that is prepared, presented, made, or rendered by:

(1) one or more directors, managers, managing participants, officers, or employees of the state trust company, or of an entity under joint or common control with the state trust company, whom the director, manager, managing participant, or officer reasonably believes merits confidence;

(2) legal counsel, a public accountant, or another person whom the director, manager, managing participant, or officer reasonably believes merits confidence; or

(3) a committee of the board of the state trust company of which the director, manager, or managing participant is not a member.

(d) In this section, "family member" means a person's:

(1) spouse;

(2) minor child; or

(3) adult child who resides in the person's home.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 66, eff. September 1, 2007.

Text of section effective until January 1, 2022

Sec. 181.006. EXEMPTION OF TRUST INSTITUTION DIRECTORS AND PERSONNEL FROM SECURITIES LAW. An officer, director, manager, managing participant, or employee of a trust institution with fewer than 500 shareholders or participants, including a state trust company or a trust institution organized under the laws of another state that lawfully maintains an office in this state, or a holding company with fewer than 500 shareholders or participants that controls a trust institution is exempt from the registration and licensing provisions of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) with respect to that person's participation in a transaction, including a sale, involving securities issued by the trust institution or the holding company of

which that person is an officer, director, manager, managing participant, or employee if the person is not compensated for the person's participation in the transaction.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.005(a), eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.15, eff. January 1, 2022.

Text of section effective on January 1, 2022

Sec. 181.006. EXEMPTION OF TRUST INSTITUTION DIRECTORS AND PERSONNEL FROM SECURITIES LAW. An officer, director, manager, managing participant, or employee of a trust institution with fewer than 500 shareholders or participants, including a state trust company or a trust institution organized under the laws of another state that lawfully maintains an office in this state, or a holding company with fewer than 500 shareholders or participants that controls a trust institution is exempt from the registration and licensing provisions of The Securities Act (Title 12, Government Code) with respect to that person's participation in a transaction, including a sale, involving securities issued by the trust institution or the holding company of which that person is an officer, director, manager, managing participant, or employee if the person is not compensated for the person's participation in the transaction.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.005(a), eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.15, eff. January 1, 2022.

Sec. 181.007. ATTACHMENT, INJUNCTION, OR EXECUTION. An attachment, injunction, or execution to collect a money judgment or secure a prospective money judgment against a trust institution,

including a state trust company or a trust institution organized under the laws of another state that lawfully maintains an office in this state, or against a client of or client account in the trust institution, is governed by Sections 59.007 and 59.008.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.006(a), eff. Sept. 1, 2001.

SUBCHAPTER B. REGULATION OF TRUST COMPANIES BY BANKING DEPARTMENT

Sec. 181.101. ISSUANCE OF INTERPRETIVE STATEMENTS. (a) The banking commissioner:

(1) may issue interpretive statements containing matters of general policy for the guidance of the public and state trust companies; and

(2) may amend or repeal a published interpretive statement by issuing an amended statement or notice of repeal of a statement.

(b) An interpretive statement may be disseminated by newsletter, via an electronic medium such as the Internet, in a volume of statutes or related materials published by the banking commissioner or others, or by other means reasonably calculated to notify persons affected by the interpretive statement. Notice of an amended or withdrawn statement must be published in a substantially similar manner as the affected statement was originally published.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.007(a), eff. Sept. 1, 2001.

Sec. 181.102. ISSUANCE OF OPINION. (a) In response to a specific request from a member of the public or industry, the banking commissioner may issue an opinion directly or through a deputy banking commissioner or department attorney.

(b) If the banking commissioner determines that the opinion is useful for the general guidance of trust companies and the public, the banking commissioner may disseminate the opinion by newsletter, via an electronic medium such as the Internet, in a volume of statutes or related materials published by the banking commissioner or others, or by other means reasonably calculated to notify persons

affected by the opinion. A published opinion must be redacted to preserve the confidentiality of the requesting party unless the requesting party consents to be identified in the published opinion.

(c) The banking commissioner may amend or repeal a published opinion by issuing an amended opinion or notice of repeal of an opinion and disseminating the opinion or notice in a substantially similar manner as the affected statement or opinion was originally published. The requesting party, however, may rely on the original opinion if:

(1) all material facts were originally disclosed to the banking commissioner;

(2) the safety and soundness of the affected trust companies will not be affected by further reliance on the original opinion; and

(3) the text and interpretation of relevant governing provisions of this subtitle have not been changed by legislative or judicial action.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.01, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 6.007(a), eff. Sept. 1, 2001.

Sec. 181.103. EFFECT OF INTERPRETIVE STATEMENT OR OPINION. An interpretive statement or opinion issued under this subchapter does not have the force of law and is not a rule for the purposes of Chapter 2001, Government Code, unless adopted as a rule by the finance commission as provided by Chapter 2001, Government Code. An interpretive statement or opinion is an administrative construction of this subtitle entitled to great weight if the construction is reasonable and does not conflict with this subtitle.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 181.104. EXAMINATION REQUIREMENT. (a) The banking commissioner shall examine each state trust company annually, or on another periodic basis as may be required by rule or policy, or as the commissioner considers necessary to:

(1) safeguard the interests of clients, creditors, shareholders, participants, or participant-transferees; and

(2) efficiently enforce applicable law.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 250 , Sec. 11(1), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 250 , Sec. 11(1), eff. September 1, 2015.

(d) Disclosure of information to the banking commissioner pursuant to an examination request or a subpoena issued under this section does not constitute a waiver of or otherwise affect or diminish an evidentiary privilege to which the information is otherwise subject. A report of an examination under this section is confidential and may be disclosed only under the circumstances provided by this subtitle.

(e) The banking commissioner may:

(1) accept an examination of a state trust company, a third-party contractor, or an affiliate of the state trust company by a federal or other governmental agency in lieu of an examination under this section; or

(2) conduct an examination of a state trust company, a third-party contractor, or an affiliate of the state trust company jointly with a federal or other governmental agency.

(f) The banking commissioner may:

(1) administer oaths and examine persons under oath on any subject that the banking commissioner considers pertinent to the financial condition or the safety and soundness of the activities of a state trust company; and

(2) subpoena witnesses and require and compel by subpoena the production of documents not voluntarily produced.

(f-1) If a person refuses to obey a subpoena, a district court of Travis County, on application by the commissioner, may issue an order requiring the person to appear before the commissioner and produce documents or give evidence regarding the matter under examination or investigation.

(g) A subpoena issued to a financial institution under this section 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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.02, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 12, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. 875), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. 875), Sec. 11(1), eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. 1823), Sec. 8, eff. September 1, 2019.

Sec. 181.105. COST OF REGULATION. Each state trust company shall pay, through the imposition and collection of fees established by the finance commission under Section 181.003(a)(4):

(1) the cost of examination;

(2) the equitable or proportionate cost of maintenance and operation of the department; and

(3) the cost of enforcement of this subtitle.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 181.106. REGULATION AND EXAMINATION OF RELATED ENTITIES. (a) The banking commissioner may regulate and examine, to the same extent as if the services or activities were performed by a state trust company on its own premises:

(1) the activities of a state trust company affiliate; and

(2) the services or activities of a third-party service provider that a state trust company or state trust company affiliate has contracted for or otherwise arranged to be performed on behalf of the state trust company or state trust company affiliate.

(b) The banking commissioner may collect a fee from an examined third-party service provider or affiliate in connection with each examination to cover the cost of the examination or may collect that fee from the state trust companies that use the examined third-party service provider.

(c) To promote regulatory efficiency, if, in the preceding 24 months, a third-party service provider or affiliate has been examined by a federal or state financial services regulatory agency or by a member agency of the Federal Financial Institutions Examination Council, or its successor agency, the banking commissioner may accept the results of that examination instead of conducting the banking commissioner's own examination of the third-party service provider or affiliate. Nothing in this subsection shall be construed as limiting or restricting the banking commissioner from participating in an examination of a third-party service provider or affiliate conducted by a federal or state financial services regulatory agency or by a member agency of the Federal Financial Institutions Examination Council, or its successor agency.

(d) A third-party service provider that refuses to submit to examination or to pay an assessed fee for examination under this section is subject to an enforcement action under Chapter 185. With respect to a third-party service provider's refusal to submit to examination, the banking commissioner may notify all state trust companies of the refusal and warn that continued use of the third-party service provider may constitute an unsafe and unsound fiduciary practice.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 10, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. 1823), Sec. 9, eff. September 1, 2019.

Sec. 181.107. STATEMENTS OF CONDITION AND INCOME; PENALTY. (a) Each state trust company periodically shall file with the banking commissioner a copy of its statement of condition and income.

(b) The finance commission by rule may:

(1) require the statement to be filed with the banking commission at the intervals the finance commission determines;

(2) specify the form of the statement of condition and income, including specified confidential and public information to be in the statement; and

(3) require public information in the statement to be published at the times and in the publications and locations the finance commission determines.

(c) A statement of condition and income is a public record except for:

(1) portions of the statement designated confidential by the banking commissioner; and

(2) the statement of condition and income for a state trust company exempt under Section 182.011 or 182.019 with regard to the period during which the exemption is in effect.

(d) A state trust company that fails to file a statement of condition and income on or before the date it is due is, after notice and hearing, subject to a penalty of not more than $500 a day for each day of noncompliance.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. 875), Sec. 3, eff. September 1, 2015.

Sec. 181.108. LIABILITY OF COMMISSION AND DEPARTMENT OFFICERS AND PERSONNEL LIMITED. (a) The banking commissioner, a member of

the finance commission, a deputy banking commissioner, an examiner, assistant examiner, supervisor, conservator, agent, or other officer or employee of the department, or an agent of the banking commissioner is not personally liable for damages arising from the person's official act or omission unless the act or omission is corrupt or malicious.

(b) The attorney general shall defend an action brought against a person because of an official act or omission under Subsection (a), regardless of whether the defendant has terminated service with the department before the action commences.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.03, eff. Sept. 1, 2001.

SUBCHAPTER C. ADMINISTRATIVE PROCEDURE

Sec. 181.201. BANKING COMMISSIONER HEARING; INFORMAL DISPOSITION. (a) The banking commissioner may convene a hearing to receive evidence and argument regarding any matter within the jurisdiction of and before the banking commissioner for decision or review. The hearing must be conducted under Chapter 2001, Government Code. A matter made confidential by law must be considered by the banking commissioner in a closed hearing.

(b) A hearing before the banking commissioner that is required or authorized by law may be conducted by a hearings officer on behalf of the banking commissioner.

(c) This section does not grant a right to hearing to a person that is not otherwise granted by governing law.

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

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.04, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. 3555), Sec. 7, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. 3555), Sec. 8, eff. September 1, 2015.

Sec. 181.202. APPEAL OF BANKING COMMISSIONER DECISION OR ORDER. Except as expressly provided otherwise by this subtitle, a person affected by a decision or order of the banking commissioner made under this subtitle after a hearing may appeal the decision or order to a district court in Travis County as provided by Section 181.204.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 22, eff. September 1, 2019.

Sec. 181.204. APPEAL TO DISTRICT COURT. A person affected by a final order of the banking commissioner may appeal the final order by filing a petition for judicial review as provided by Chapter 2001, Government Code. A petition for judicial review filed in the district court does not stay or vacate the appealed order unless the court, after notice and hearing, expressly stays or vacates the order.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 22, eff. September 1, 2019.

SUBCHAPTER D. CONFIDENTIALITY OF INFORMATION

Sec. 181.301. DISCLOSURE BY DEPARTMENT PROHIBITED. (a) Except as expressly provided otherwise by this subtitle or a rule adopted under this subtitle, the following are confidential and may not be disclosed by the banking commissioner or an employee of the department:

(1) information directly or indirectly obtained by the department in any manner, including through an application or examination, concerning the financial condition or business affairs of a state trust company, a present, former, or prospective shareholder, participant, officer, director, manager, or affiliate of

the state trust company, or a third-party service provider of the state trust company or its affiliate, other than the public portions of a report of condition or income statement; and

(2) each related file or record of the department.

(b) Information obtained by the department from a federal or state regulatory agency that is confidential under federal or state law may not be disclosed except as provided by federal or state law.

(c) The banking commissioner or an officer or employee of the department commits an offense if the person:

(1) discloses information or permits access to a file or record of the department; and

(2) knows at the time of disclosure or permission that the disclosure or permission violates this subchapter.

(d) An offense under this section is a Class A misdemeanor.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.05, eff. Sept. 1, 2001.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 11, eff. September 1, 2017.

Sec. 181.3015. DISCLOSURE TO STATE TRUST COMPANIES. The banking commissioner may disclose to a state trust company information about an affiliate or third-party service provider of the state trust company.

Added by Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 12, eff. September 1, 2017.

Sec. 181.302. DISCLOSURE TO FINANCE COMMISSION. Confidential information may not be disclosed to a member of the finance commission. A member of the finance commission may not be given access to the files and records of the department except that the banking commissioner may disclose to the finance commission information, files, and records pertinent to a hearing or matter pending before the finance commission.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1,

1999.

Sec. 181.303. DISCLOSURE TO OTHER AGENCIES. (a) For purposes of this section, "affiliated group," "agency," "functional regulatory agency," and "privilege" have the meanings assigned by Section 31.303.

(b) The banking commissioner may, as the banking commissioner considers necessary or proper to the enforcement of the laws of this state, another state, the United States, or a foreign sovereign state with whom the United States currently maintains diplomatic relations, or in the best interest of the public, disclose information in the possession of the department to another agency. The banking commissioner may not disclose information under this section that is confidential under applicable state or federal law unless:

(1) the recipient agency agrees to maintain the confidentiality and take all reasonable steps to oppose an effort to secure disclosure of the information from the agency; or

(2) the banking commissioner determines in the exercise of discretion that the interest of law enforcement outweighs and justifies the potential for disclosure of the information by the recipient agency.

(c) The banking commissioner by agreement may establish an information sharing and exchange program with a functional regulatory agency that has overlapping regulatory jurisdiction with the department, with respect to all or part of an affiliated group, including a financial institution, to reduce the potential for duplicative and burdensome filings, examinations, and other regulatory activities. Each agency party to the agreement must agree to maintain confidentiality of information that is confidential under applicable state or federal law and take all reasonable steps to oppose any effort to secure disclosure of the information from the agency. An agreement may also specify procedures regarding use and handling of confidential information and identify types of information to be shared and procedures for sharing on a recurring basis.

(d) Disclosure of information by or to the banking commissioner under this section does not constitute a waiver of or otherwise affect or diminish an evidentiary privilege to which the information is otherwise subject, whether or not the disclosure is governed by a

confidentiality agreement.

(e) Notwithstanding other law, an agency of this state:

(1) may execute, honor, and comply with an agreement to maintain confidentiality and oppose disclosure of information obtained from the banking commissioner as provided in this section; and

(2) shall treat as confidential any information obtained from the banking commissioner that is entitled to confidential treatment under applicable state or federal law and take all reasonable steps to oppose an effort to secure disclosure of the information from the agency.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 19, eff. Sept. 1, 2001.

Sec. 181.304. OTHER DISCLOSURE PROHIBITED; PENALTY. (a) Confidential information that is provided to a state trust company, affiliate, or service provider of the state trust company, whether in the form of a report of examination or otherwise, is the confidential property of the department. The information may not be made public or disclosed by the recipient or by an officer, director, manager, employee, or agent of the recipient to a person not officially connected to the recipient as officer, director, employee, attorney, auditor, independent auditor, or bonding company, except as authorized by rules adopted under this subtitle.

(b) A person commits an offense if the person discloses or uses the confidential information in violation of this section. An offense under this subsection is punishable as if it were an offense under Section 37.10, Penal Code.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 181.305. CIVIL DISCOVERY. Civil discovery of confidential information from a person subject to Section 181.304 under subpoena or other legal process in a civil proceeding must comply with rules adopted under this subtitle and other applicable law. The rules may:

(1) restrict release of confidential information to the

portion directly relevant to the legal dispute at issue; and

(2) require that a protective order, in the form and under circumstances specified by the rules, be issued by a court before release of the confidential information.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.06, eff. Sept. 1, 2001.

Sec. 181.306. INVESTIGATIVE INFORMATION. Notwithstanding any other law, the banking commissioner may refuse to release information or records concerning a state trust company in the custody of the department if, in the opinion of the banking commissioner, release of the information or records might jeopardize an ongoing investigation of potentially unlawful activity.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 181.307. EMPLOYMENT INFORMATION. (a) A person may provide employment information concerning the known or suspected involvement of a present or former employee, officer, or director of a state trust company in a violation of any state or federal law, rule, or regulation that has been reported to appropriate state or federal authorities to:

(1) a state trust company; or

(2) a person providing employment information to a state trust company.

(b) A person may not be held liable for providing information under Subsection (a) unless the information provided is false and the person provided the information with disregard for the truth.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 181.308. SHAREHOLDER INSPECTION RIGHTS. (a) Notwithstanding Section 21.218 or 101.502, Business Organizations Code, a shareholder or participant of a state trust company may not

examine:

(1) a report of examination or other confidential property of the department that is in the possession of the state trust company; or

(2) a book or record of the state trust company that directly or indirectly pertains to financial or other information maintained by the state trust company on behalf of its clients, including a specific item in the minutes of the board or a committee of the board regarding client account review and approval or any report that would tend to identify the state trust company's client.

(b) This section does not affect the rights of a shareholder or participant of a state trust company acting in another capacity.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 67, eff. September 1, 2007.

CHAPTER 182. POWERS, ORGANIZATION, AND FINANCIAL REQUIREMENTS

SUBCHAPTER A. ORGANIZATION AND POWERS IN GENERAL

Sec. 182.001. ORGANIZATION AND GENERAL POWERS OF STATE TRUST COMPANY. (a) Subject to Subsection (g) and the other provisions of this chapter, one or more persons may organize and charter a state trust company as a state trust association or a limited trust association.

(b) A state trust company may engage in the trust business by:

(1) acting as trustee under a written agreement;

(2) receiving money and other property in its capacity as trustee for investment in real or personal property;

(3) acting as trustee and performing the fiduciary duties committed or transferred to it by order of a court;

(4) acting as executor, administrator, or trustee of the estate of a deceased person;

(5) acting as a custodian, guardian, conservator, or trustee for a minor or incapacitated person;

(6) acting as a successor fiduciary to a trust institution or other fiduciary;

(7) receiving for safekeeping personal property;

(8) acting as custodian, assignee, transfer agent, escrow agent, registrar, or receiver;

(9) acting as investment advisor, agent, or attorney in fact according to an applicable agreement;

(10) with the prior written approval of the banking commissioner and to the extent consistent with applicable fiduciary principles, engaging in a financial activity or an activity incidental or complementary to a financial activity, directly or through a subsidiary;

(11) exercising additional powers expressly conferred by rule of the finance commission; and

(12) exercising any incidental power that is reasonably necessary to enable it to fully exercise the powers expressly conferred according to commonly accepted fiduciary customs and usages.

(c) For purposes of other state law, a trust association is considered a corporation and a limited trust association is considered a limited liability company. To the extent consistent with this subtitle, a trust association may exercise the powers of a Texas business corporation and a limited trust association may exercise the powers of a Texas limited liability company as reasonably necessary to enable exercise of specific powers under this subtitle.

(d) A state trust company may contribute to a community fund or to a charitable, philanthropic, or benevolent instrumentality conducive to public welfare an amount that the state trust company's board considers appropriate and in the interests of the state trust company.

(e) Subject to Section 184.301, a state trust company may deposit trust funds with itself.

(f) A state trust company insured by the Federal Deposit Insurance Corporation may receive and pay deposits, with or without interest, made by the United States, the state, a county, or a municipality.

(g) In the exercise of discretion consistent with the purposes of this subtitle, the banking commissioner may require a state trust company to conduct an otherwise authorized activity through a subsidiary.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1,

1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 20, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 6.008(a), eff. Sept. 1, 2001.

Sec. 182.002. CERTIFICATE OF FORMATION OF STATE TRUST COMPANY. (a) The certificate of formation of a state trust company must be signed and acknowledged by each organizer and must contain:

(1) the name of the state trust company, subject to Subsection (b);

(2) the period of the state trust company's duration, which may be perpetual;

(3) the powers of the state trust company, which may be stated as:

(A) all powers granted to a state trust company in this state; or

(B) a list of the specific powers that the state trust company chooses and is authorized to exercise;

(4) the aggregate number of shares, or participation shares in the case of a limited trust association, that the state trust company will be authorized to issue, and the number of classes of shares or participation shares, which may be one or more;

(5) if the shares or participation shares are to be divided into classes:

(A) the designation of each class and statement of the preferences, limitations, and relative rights of the shares or participation shares of each class, which in the case of a limited trust association may be more fully set forth in the participation agreement;

(B) the number of shares or participation shares of each class; and

(C) a statement of the par value of the shares or participation shares of each class or that the shares or participation shares are to be without par value;

(6) any provision limiting or denying to shareholders or participants the preemptive right to acquire additional or treasury shares or participation shares of the state trust company;

(7) any provision granting the right of shareholders or participants to cumulative voting in the election of directors or managers;

(8) the aggregate amount of consideration to be received for all shares or participation shares initially issued by the state trust company and a statement that:

(A) all authorized shares or participation shares have been subscribed; and

(B) all subscriptions received have been irrevocably paid in cash;

(9) any provision consistent with law that the organizers elect to set forth in the certificate of formation for the regulation of the internal affairs of the state trust company or that is otherwise required by this subtitle to be set forth in the certificate of formation;

(10) the street address of the state trust company's home office; and

(11) either:

(A) the number of directors or managers constituting the initial board and the names and street addresses of the persons who are to serve as directors or managers until the first annual meeting of shareholders or participants or until successor directors or managers have been elected and qualified; or

(B) the statement described by Subsection (c).

(b) The banking commissioner may determine that a proposed state trust company name is potentially misleading to the public and require the organizers to select a different name.

(c) The organizers of a limited trust association that will have not fewer than five or more than 25 participants may include in the certificate of formation a statement that management is vested in a board composed of all participants, with management authority vested in each participant in proportion to the participant's contribution to capital as adjusted from time to time to properly reflect any additional contribution, and the names and street addresses of the persons who are to be the initial managing participants.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 10, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 16, eff.

June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 17, eff. June 14, 2013.

Sec. 182.003. APPLICATION FOR STATE TRUST COMPANY CHARTER; STANDARDS FOR APPROVAL. (a) An application for a state trust company charter must be made under oath and in the form required by the banking commissioner. The application must be supported by information, records, and opinions of counsel that the banking commissioner requires. The application must be accompanied by all charter fees and deposits required by statute or rule.

(b) The banking commissioner shall grant a state trust company charter only on proof satisfactory to the banking commissioner that public convenience and advantage will be promoted by the establishment of the state trust company. In determining whether public convenience and advantage will be promoted, the banking commissioner shall consider the convenience of the public to be served and whether:

(1) the organizational and capital structure and amount of initial capitalization is adequate for the business and location;

(2) the anticipated volume and nature of business indicates a reasonable probability of success and profitability based on the market sought to be served;

(3) the proposed officers, directors, and managers, or managing participants, as a group have sufficient fiduciary experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the state trust company will operate in compliance with law and that success of the state trust company is probable;

(4) each principal shareholder or participant has sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law; and

(5) the organizers are acting in good faith.

(c) The organizers bear the burden of proof to establish that public convenience and advantage will be promoted by the establishment of the state trust company. The failure of an

applicant to furnish required information, opinions of counsel, and other material, or the required fee, is considered an abandonment of the application.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.004. NOTICE AND INVESTIGATION OF CHARTER APPLICATION. (a) The organizers shall solicit comments and protests by publishing notice of the application, its date of filing, and the identity of the organizers, in the form and frequency specified by the banking commissioner, in a newspaper of general circulation in the county where the initial home office of the proposed state trust company is to be located, or in another publication or location as directed by the banking commissioner. The banking commissioner may require the organizers to publish the notice at other locations reasonably necessary to solicit the views of potentially affected persons.

(b) At the expense of the organizers, the banking commissioner shall thoroughly investigate the application and inquire fully into the identity and character of each proposed director, manager, officer, managing participant, and principal shareholder or participant. The banking commissioner shall prepare a written report of the investigation.

(c) Rules adopted under this subtitle may specify the confidential or nonconfidential character of information obtained or prepared by the department under this section. Except as provided by Subchapter D, Chapter 181, or in rules regarding confidential information, the business plan of the applicant and the financial statement of a proposed officer, director, manager, or managing participant are confidential and not subject to public disclosure.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.07, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 11, eff. September 1, 2007.

Sec. 182.005. PROTEST; HEARING; DECISION ON CHARTER

APPLICATION. (a) A protest of a charter application must be received by the department before the 15th day after the date the organizers publish notice under Section 182.004(a) and must be accompanied by the fees and deposits required by law. If the protest is untimely, the department shall return all submitted fees and deposits to the protesting party. If the protest is timely, the department shall notify the applicant of the protest and mail or deliver a complete copy of the nonconfidential sections of the charter application to the protesting party before the 15th day after the later of the date of receipt of the protest or receipt of the charter application.

(b) A protesting party must file a detailed protest responding to each contested statement contained in the nonconfidential portion of the application not later than the 20th day after the date the protesting party receives the application from the department, and relate each statement and response to the standards for approval set forth in Section 182.003(b). The applicant must file a written reply to the protesting party's detailed response on or before the 10th day after the date the response is filed. The protesting party's response and the applicant's reply must be verified by affidavit and must certify that a copy was served on the opposing party. If applicable, statements in the response and in the reply may be supported by references to data available in sources of which official notice may properly be taken. Any comment received by the department and any reply of the applicant to the comment shall be made available to the protesting party.

(c) The banking commissioner may not be compelled to hold a hearing before granting or denying the charter application. In the exercise of discretion, the banking commissioner may consider granting a hearing on a charter application at the request of the applicant or a protesting party. The banking commissioner may order a hearing regardless of whether a hearing has been requested by a party. A party requesting a hearing must indicate with specificity the issues involved that cannot be determined on the basis of the record compiled under Subsection (b) and why the issues cannot be determined. A request for hearing and the banking commissioner's decision with regard to granting a hearing shall be made a part of the record. If the banking commissioner sets a hearing, the banking commissioner shall conduct a public hearing and as many prehearing conferences and opportunities for discovery as the banking

commissioner considers advisable and consistent with governing statutes and rules, except that the banking commissioner may not permit discovery of confidential information in the charter application or the investigation report.

(d) Based on the record, the banking commissioner shall determine whether all of the necessary conditions set forth in Section 182.003(b) have been established and shall enter an order granting or denying the charter.

(e) The banking commissioner may make approval of any application conditional. The banking commissioner shall include any conditions in the order granting the charter.

(f) Chapter 2001, Government Code, does not apply to a charter application filed for the purpose of assuming all or any portion of the assets, liabilities, and accounts of a trust institution considered by the banking commissioner to be in hazardous condition.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.009(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 12, eff. September 1, 2007.

Sec. 182.006. ISSUANCE OF CHARTER. A state trust company may not engage in the trust business until it receives its charter from the banking commissioner. The banking commissioner may not deliver the charter until the state trust company has:

(1) received cash in at least the full amount of restricted capital from subscriptions for the issuance of shares or participation shares;

(2) elected or qualified the initial officers and directors or managers, as appropriate, named in the application for charter or other officers and directors or managers approved by the banking commissioner; and

(3) complied with all other requirements of this subtitle relating to the organization of the state trust company.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.007. DEADLINE TO BEGIN BUSINESS. If a state trust company does not open and engage in the trust business within six months after the date it receives its charter or conditional approval of application for charter, the banking commissioner may revoke the charter or cancel the conditional approval of application for charter without judicial action.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.008. RESTRICTED CAPITAL. (a) The banking commissioner may not issue a charter to a state trust company having restricted capital of less than $2 million.

(b) The banking commissioner may, on a case-by-case basis, require additional restricted capital for a proposed or existing state trust company if the banking commissioner finds the condition and operations of the existing state trust company or the proposed scope or type of operations of the proposed state trust company requires additional restricted capital to protect the safety and soundness of the state trust company. The safety and soundness factors to be considered by the banking commissioner in the exercise of discretion include:

(1) the nature and type of business the state trust company conducts;

(2) the nature and degree of liquidity in assets held in a corporate capacity;

(3) the amount, type, and depository of fiduciary assets that the state trust company manages;

(4) the complexity of the state trust company's fiduciary duties and degree of discretion undertaken;

(5) the competence and experience of the state trust company's management;

(6) the extent and adequacy of internal controls maintained by the state trust company;

(7) the presence or absence of annual unqualified audits by an independent certified public accountant;

(8) the reasonableness of the state trust company's business plans for retaining or acquiring additional restricted capital; and

(9) the existence and adequacy of insurance obtained or held by the state trust company to protect its clients, beneficiaries, and grantors.

(c) The effective date of an order under Subsection (b) must be stated in the order and must be on or after the 21st day after the date the order is mailed or delivered. Unless the state trust company requests a hearing before the banking commissioner in writing before the effective date of the order, the order takes effect and is final and nonappealable. This subsection does not prohibit an application to reduce capital requirements of an existing state trust company under Subsection (e) or under Section 182.011.

(d) Subject to Subsection (e) and Section 182.011, a state trust company to which the banking commissioner issues a charter shall at all times maintain restricted capital in at least the amount required under Subsection (a) and in any additional amount the banking commissioner requires under Subsection (b).

(e) Notwithstanding Subsection (a), on application, the banking commissioner may, on a case-by-case basis in the exercise of discretion, reduce the amount of minimum restricted capital required for a state trust company in a manner consistent with protecting the state trust company's safety and soundness. In making a determination under this subsection, the banking commissioner shall consider the factors listed by Subsection (b).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. 875), Sec. 4, eff. September 1, 2015.

Sec. 182.009. APPLICATION OF GENERAL CORPORATE LAW. (a) The Business Organizations Code applies to a trust association as if it were a for-profit corporation, and to a limited trust association as if it were a limited liability company, to the extent not inconsistent with this subtitle or the proper business of a state trust company, except that:

(1) a reference to the secretary of state means the banking commissioner unless the context requires otherwise; and

(2) the right of shareholders or participants to cumulative

voting in the election of directors or managers exists only if granted by the state trust company's certificate of formation.

(b) Unless expressly authorized by this subtitle or a rule of the finance commission, a state trust company may not take an action authorized by a law listed under Subsection (a) regarding its corporate status, capital structure, or a matter of corporate governance, of the type for which a law listed under Subsection (a) would require a filing with the secretary of state if the state trust company were a filing entity, without submitting the filing to the banking commissioner for prior written approval of the action.

(c) The finance commission may adopt rules to alter or supplement the procedures and requirements of the laws listed by Subsection (a) applicable to an action taken under this chapter by a state trust company.

(d) In this subtitle, a reference to a term or phrase listed in a subdivision of Section 1.006, Business Organizations Code, includes a synonymous term or phrase referenced by the same subdivision in Section 1.006 of that code.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 21, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 68, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 18, eff. June 14, 2013.

Sec. 182.010. PARITY. (a) A state trust company has the same rights and privileges with respect to the exercise of fiduciary powers that are or may be granted to a trust institution that maintains its principal office or a branch or trust office in this state, except that this section may not be used by a state trust company to:

(1) diminish its otherwise applicable fiduciary duties to a client under the laws of this state; or

(2) avoid otherwise applicable consumer protection laws of this state.

(b) A state trust company that intends to exercise a right or

privilege with respect to the exercise of fiduciary powers granted to a trust institution described in Subsection (a) that is not authorized for state trust companies under the statutes and rules of this state other than under this section shall submit a letter to the banking commissioner, describing in detail the activity in which the state trust company intends to engage and the specific authority for the trust institution described in Subsection (a) to undertake the proposed activity. The state trust company shall attach copies, if available, of relevant state and federal law, including regulations and interpretive letters. The state trust company may begin to perform the proposed activity after the 30th day after the date the banking commissioner receives the state trust company's letter unless the banking commissioner specifies an earlier or later date or prohibits the activity. The banking commissioner may prohibit the state trust company from performing the activity only if the banking commissioner finds that:

(1) a trust institution described in Subsection (a) does not possess the specific right or privilege to perform the activity the state trust company seeks to perform; or

(2) the performance of the activity by the state trust company would adversely affect the safety and soundness of the requesting state trust company.

(c) The banking commissioner may extend the 30-day period under Subsection (b) if the banking commissioner determines that the state trust company's letter raises issues requiring additional information or additional time for analysis. If the 30-day period is extended, the state trust company may perform the proposed activity only on prior written approval by the banking commissioner, except that the banking commissioner must approve or prohibit the proposed activity or convene a hearing under Section 181.201 not later than the 60th day after the date the commissioner receives the state trust company's letter. If a hearing is convened, the banking commissioner must approve or prohibit the proposed activity not later than the 30th day after the date the hearing is completed.

(d) A state trust company that is denied the requested right or privilege to engage in an activity by the banking commissioner under this section may appeal as provided by Sections 181.202 and 181.204 or may resubmit a letter under this section with additional information or authority relevant to the banking commissioner's determination. A denial is immediately final for purposes of appeal.

(e) The finance commission may adopt rules implementing the method or manner in which a state trust company exercises specific rights and privileges, including rules regarding the exercise of rights and privileges that would be prohibited to state trust companies under state law except as provided by this section. The finance commission may not adopt rules under this subsection unless it finds that:

(1) trust institutions described in Subsection (a) possess the rights or privileges to perform activities the rules would permit state trust companies to perform; and

(2) if the rights and privileges would be prohibited to state trust companies under other state law, the rules contain adequate safeguards and controls, consistent with safety and soundness, to address the concern of the legislature evidenced by the state law the rules would impact.

(f) The exercise of rights and privileges by a state trust company in compliance with and in the manner authorized by this section is not a violation of any statute of this state.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.010(a), eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 23, eff. September 1, 2019.

Sec. 182.0105. FINANCIAL ACTIVITIES. (a) The finance commission by rule may determine that an activity not otherwise approved or authorized for state trust companies is:

(1) a financial activity;

(2) incidental to a financial activity; or

(3) complementary to a financial activity.

(b) In adopting a rule under Subsection (a), the finance commission shall consider:

(1) the purposes of this subtitle and the Gramm-Leach-Bliley Act (Pub. L. No. 106-102);

(2) changes or reasonably expected changes in the marketplace in which state trust companies compete;

(3) changes or reasonably expected changes in the

technology for delivering fiduciary and financial services;

(4) whether the activity is necessary or appropriate to allow a state trust company to:

(A) compete effectively with another company seeking to provide fiduciary and financial services;

(B) efficiently deliver information and services that are financial in nature through the use of technological means, including an application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; or

(C) offer customers available or emerging technological means for using fiduciary and financial services or for the document imaging of data;

(5) whether the activity would violate applicable fiduciary duties or otherwise pose a substantial risk to the safety and soundness of a state trust company or the fiduciary and financial system generally; and

(6) if otherwise determined to be permissible, whether the conduct of the activity by a state trust company should be qualified through the imposition of reasonable and necessary conditions to protect the public and require appropriate regard for safety and soundness of the trust company and the fiduciary and financial system generally.

(c) A rule adopted by the finance commission under this section does not alter or negate applicable licensing and regulatory requirements administered by a functional regulatory agency of this state, as defined by Section 31.303, including licensing and regulatory requirements pertaining to:

(1) insurance activities;

(2) securities activities; and

(3) real estate development, marketing, and sales activities.

Added by Acts 2001, 77th Leg., ch. 528, Sec. 22, eff. Sept. 1, 2001.

Sec. 182.011. EXEMPTION FROM STATUTORY PROVISIONS FOR CERTAIN STATE TRUST COMPANIES. (a) A state trust company may request in writing that it be exempted from specified provisions of this subtitle. The banking commissioner may grant the exemption in whole

or in part, subject to Subsection (c), if the banking commissioner finds that the state trust company:

(1) has only family clients and transacts business solely on behalf of family clients and their related interests;

(2) is wholly owned, directly or indirectly, legally or beneficially, by one or more family members; and

(3) does not hold itself out to the general public as a corporate fiduciary for hire.

(a-1) In this section:

(1) "Family client" includes:

(A) a family member;

(B) a former family member;

(C) a key employee of the trust company as defined by and to the extent permitted by rules adopted under Subsection (e), including a former key employee for a reasonable transition period specified by rule;

(D) a nonprofit organization, charitable foundation, charitable trust, including a charitable lead trust or charitable remainder trust whose only current beneficiaries are other family clients and charitable or nonprofit organizations, or another charitable organization for which all the funding came exclusively from one or more other family clients;

(E) the estate of a family member or former family member;

(F) an irrevocable trust under which one or more other family clients are the only current beneficiaries;

(G) an irrevocable trust funded exclusively by one or more family clients in which other family clients and nonprofit organizations, charitable foundations, charitable trusts, or other charitable organizations are the only current beneficiaries;

(H) a company wholly owned by, and operated for the sole benefit of, one or more other family clients;

(I) a revocable trust of which one or more other family clients are the sole grantors, including any such trust that becomes irrevocable, wholly or partly, for a reasonable transition period as specified by rule; and

(J) any other persons as may be permitted by rules adopted under Subsection (e).

(2) "Family member," with respect to an individual, means an individual related to the individual within the seventh degree of

consanguinity or affinity, as determined under Subchapter B, Chapter 573, Government Code, except that a foster child is considered the child of the foster parent and a person for whom a guardian was appointed before the person's 18th birthday is considered the child of the guardian.

(3) "Former family member" includes a former spouse or stepchild who was a family member but is no longer a family member due to a divorce or other similar event.

(b) At the expense of a state trust company, the banking commissioner may examine or investigate the state trust company in connection with an application for an exemption. Unless the application presents novel or unusual questions, the banking commissioner shall approve the application for exemption or set the application for hearing not later than the 61st day after the date the banking commissioner considers the application complete and accepted for filing. The banking commissioner may require the submission of additional information as considered necessary to an informed decision.

(c) An exemption granted under this section may be made subject to conditions or limitations imposed by the banking commissioner consistent with this subtitle.

(d) A state trust company that is or has been exempt from a provision of this subtitle under this section or a predecessor statute may not transact business with the general public unless the banking commissioner determines, as provided by Section 182.003, that public convenience and advantage will be promoted by permitting the state trust company to engage in the trust business with the general public.

(e) The finance commission may adopt rules:

(1) defining other circumstances under which a state trust company may be exempted from a provision of this subtitle because it does not transact business with the general public;

(2) specifying the provisions of this subtitle that are subject to an exemption request;

(3) establishing procedures and requirements for obtaining, maintaining, or revoking an exemption; and

(4) defining or further defining terms used by this section.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1,

1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. 875), Sec. 5, eff. September 1, 2015.

Sec. 182.012. APPLICATION FOR EXEMPTION. (a) A state trust company requesting an exemption under Section 182.011 shall file an application with the banking commissioner that includes:

(1) a nonrefundable application fee set by the finance commission;

(2) a detailed sworn statement showing the state trust company's assets and liabilities as of the end of the calendar month preceding the filing of the application;

(3) a sworn statement of the reason for requesting the exemption;

(4) a sworn statement that the state trust company:

(A) has or will have only family clients and transacts or will transact business solely on behalf of family clients and their related interests;

(B) is or will be wholly owned, directly or indirectly, legally or beneficially, by one or more family members;

(C) does not or will not hold itself out to the general public as a corporate fiduciary for hire; and

(D) will not transact business with the general public without the prior written permission of the banking commissioner;

(5) the current street mailing address and telephone number of the physical location in this state at which the state trust company will maintain its books and records, with a sworn statement that the address given is true and correct and is not a United States Postal Service post office box or a private mail box, postal box, or mail drop; and

(6) a list of the specific provisions of this subtitle for which the request for an exemption is made.

(b) The banking commissioner may not approve an exemption unless the application is completed as required by Subsection (a).

(c) In this section, "family client" and "family member" have the meanings assigned by Section 182.011.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1,

1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. 875), Sec. 6, eff. September 1, 2015.

Sec. 182.013. ANNUAL CERTIFICATION FOR EXEMPT STATE TRUST COMPANY. (a) An exempt state trust company shall file a certification annually with its statement of condition and income, on a form provided by the banking commissioner, that it is maintaining the conditions and limitations of its exemption. The certification must be accompanied by a fee set by the finance commission.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 250 , Sec. 11(2), eff. September 1, 2015.

(c) The state trust company shall maintain records necessary to verify the certification. The records are subject to examination under Section 181.104.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. 875), Sec. 7, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. 875), Sec. 11(2), eff. September 1, 2015.

Sec. 182.014. LIMITATION ON EFFECT OF EXEMPTION. (a) An exempt state trust company shall comply with the home office provisions of Section 182.202.

(b) The grant of an exemption to a state trust company does not affect the state trust company's obligation to pay any corporate franchise tax required by state law.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.015. CHANGE OF CONTROL OF EXEMPT STATE TRUST COMPANY. If control of an exempt state trust company is sold or otherwise transferred, the acquiring person must comply with Sections 182.003,

182.004, 182.005, 183.001, and 183.002. For the exempt status of the state trust company to continue, the acquiring person must file a certification with the banking commissioner that the state trust company will comply, or continue to comply, with the requirements of Section 182.011 after control is transferred. The banking commissioner may examine or investigate the acquiring person and the state trust company as necessary to verify the certification. If the commissioner determines that the state trust company will not comply, or continue to comply, with the requirements of Section 182.011 after control is transferred, the commissioner shall terminate the exemption on the effective date of the transfer. After the termination, the acquiring person must file a separate application to obtain a new exemption for the state trust company under Section 182.011.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. 875), Sec. 8, eff. September 1, 2015.

Sec. 182.016. GROUNDS FOR REVOCATION OF EXEMPTION. The banking commissioner may revoke an exemption of a state trust company if the trust company:

(1) makes a false statement under oath on any document required to be filed by this subtitle or finance commission rule;

(2) fails to submit to an examination as required by Section 181.104;

(3) withholds requested information from the banking commissioner; or

(4) violates any provision of this subtitle applicable to an exempt state trust company.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.017. NOTICE AND EFFECT OF REVOCATION OF EXEMPTION. (a) If the banking commissioner determines from examination or other credible evidence that an exempt state trust company has violated any

of the requirements of this subchapter relating to an exempt state trust company, the banking commissioner may by personal delivery or registered or certified mail, return receipt requested, notify the state trust company in writing that the state trust company's exemption has been revoked. The notice must state grounds for the revocation with reasonable certainty. The notice must state its effective date, which may not be earlier than the fifth day after the date the notification is mailed or delivered.

(b) The revocation takes effect for the state trust company if the state trust company does not request a hearing in writing before the effective date. After taking effect the revocation is final and nonappealable as to that state trust company, and the state trust company is subject to all of the requirements and provisions of this subtitle applicable to nonexempt state trust companies.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.018. ACTION AFTER REVOCATION OF EXEMPTION. (a) A state trust company must comply with all of the provisions of Sections 182.003(b) and (c) not later than the fifth day after the date the revocation of the exemption takes effect. If, however, the banking commissioner determines at the time of revocation that the state trust company has been engaging in or attempting to engage in acts intended or designed to deceive or defraud the public, the banking commissioner, in the banking commissioner's sole discretion, may waive the compliance period provided by this subsection.

(b) If within the period prescribed by Subsection (a) the state trust company does not comply with all of the provisions of this subtitle, including capitalization requirements determined by the banking commissioner as necessary to assure the safety and soundness of the state trust company, the banking commissioner may:

(1) institute any action or remedy prescribed by this subtitle or any applicable rule; or

(2) refer the state trust company to the attorney general for institution of a quo warranto proceeding to revoke the state trust company's charter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.019. PRIOR EXEMPTION. (a) Subject to Subsection (b), a state trust company that was exempt before September 1, 1997, may no longer operate with that prior exempt status after the earlier of:

(1) September 1, 2020; or

(2) the date control is sold or otherwise transferred.

(b) A state trust company may apply for a new exemption under Section 182.011 before loss of its exempt status under Subsection (a).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. 875), Sec. 9, eff. September 1, 2015.

Sec. 182.020. FOREIGN CORPORATION EXERCISING TRUST POWERS. (a) A foreign corporation may not conduct a trust business in this state. A foreign corporation may control a state trust company in this state if the state trust company is formed or acquired and operated as provided by this subtitle and applicable rules.

(b) A foreign corporation or other entity chartered or domiciled in another jurisdiction as a trust company or depository institution with trust powers may act as a trustee in this state only as provided by Subchapter A, Chapter 505, Estates Code.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 20.016, eff. September 1, 2015.

Sec. 182.021. ACTIVITIES NOT REQUIRING CHARTER. Subject to Subchapter C, Chapter 187, a company does not engage in the trust business in a manner requiring a state charter by:

(1) acting in a manner authorized by law and in the scope of authority as an agent of a trust institution;

(2) rendering a service customarily performed as an

attorney in a manner approved and authorized by the Supreme Court of Texas or State Bar of Texas;

(3) acting as trustee under a deed of trust made only as security for the payment of money or for the performance of another act;

(4) conducting business as a trust institution if the exercise of fiduciary powers in this state by the trust institution is not otherwise prohibited by law;

(5) engaging in a business regulated by the Office of Consumer Credit Commissioner, except as limited by rules adopted by the finance commission;

(6) receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Texas Real Estate Commission;

(7) engaging in a securities transaction or providing an investment advisory service as a licensed and registered dealer, salesman, or advisor to the extent that the activity is regulated by the State Securities Board or the Securities and Exchange Commission;

(8) engaging in the sale and administration of an insurance product by an insurance company or agent authorized or licensed by the Texas Department of Insurance to the extent that the activity is regulated by the Texas Department of Insurance;

(9) engaging in the lawful sale of prepaid funeral benefits under a permit issued by the banking commissioner under Chapter 154;

(10) engaging in the lawful business of a perpetual care cemetery corporation under Chapter 712, Health and Safety Code;

(11) engaging as a principal in the money services business under a license issued by the banking commissioner under Chapter 151;

(12) acting as trustee under a voting trust as provided by Section 6.251, Business Organizations Code;

(13) acting as trustee by a public, private, or independent institution of higher education or a university system, as defined by Section 61.003, Education Code, including an affiliated foundation or corporation of such an institution or system acting as trustee as provided by the Education Code;

(14) engaging in another activity expressly excluded from the application of this subtitle by rule of the finance commission;

(15) rendering services customarily performed by a certified accountant in a manner authorized by the Texas State Board of Public Accountancy;

(16) serving as trustee of a charitable trust as provided by Section 2.106, Business Organizations Code;

(17) performing escrow or settlement services if licensed or authorized under Title 11, Insurance Code;

(18) acting as a qualified intermediary in a tax deferred exchange under Section 1031, Internal Revenue Code of 1986, and applicable regulations;

(19) providing permitted services at a trust representative office established in this state pursuant to Subchapter C, Chapter 187; or

(20) acting as a trustee or custodian approved by the Internal Revenue Service under 26 C.F.R. Section 1.408-2(e) of an individual retirement account described by Section 408(a), Internal Revenue Code of 1986.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.011(a), eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.111, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 69, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 13, eff. September 1, 2017.

Sec. 182.0211. CONFORMANCE WITH SECURITIES ACT. For the purposes of Section 182.021(7), "salesman" includes "agent" and "advisor" includes "investment adviser" or "investment adviser representative."

Added by Acts 2001, 77th Leg., ch. 1091, Sec. 4.03, eff. Sept. 1, 2001.

SUBCHAPTER B. AMENDMENT OF CERTIFICATE; CHANGES IN CAPITAL AND SURPLUS

Sec. 182.101. AMENDMENT OR RESTATEMENT OF STATE TRUST COMPANY CERTIFICATE OF FORMATION. (a) A state trust company that has been granted a charter under Section 182.006 or a predecessor statute may

amend or restate its certificate of formation for any lawful purpose, including the creation of authorized but unissued shares or participation shares in one or more classes or series.

(b) An amendment authorizing the issuance of shares or participation shares in series must contain:

(1) the designation of each series and a statement of any variations in the preferences, limitations, and relative rights among series to the extent that the preferences, limitations, and relative rights are to be established in the certificate of formation; and

(2) a statement of any authority to be vested in the board to establish series and determine the preferences, limitations, and relative rights of each series.

(c) A limited trust association may not amend its certificate of formation to extend its period of existence for a perpetual period or for any period of years, unless the period of existence is expressly contingent on those events resulting in dissolution of the trust association under Section 183.208.

(d) Amendment or restatement of the certificate of formation of a state trust company and approval of the board and shareholders or participants must be made or obtained in accordance with the Business Organizations Code, except as otherwise provided by this subtitle or rules adopted under this subtitle. The original and one copy of the certificate of amendment or restated certificate of formation must be filed with the banking commissioner for approval. Unless the submission presents novel or unusual questions, the banking commissioner shall approve or reject the amendment or restatement not later than the 31st day after the date the banking commissioner considers the submission informationally complete and accepted for filing. The banking commissioner may require the submission of additional information as considered necessary to an informed decision to approve or reject any amendment or restatement of a certificate of formation under this section.

(e) If the banking commissioner finds that the amendment or restatement conforms to law and any conditions imposed by the banking commissioner, and any required filing fee has been paid, the banking commissioner shall:

(1) endorse the face of the original and copy with the date of approval and the word "Approved";

(2) file the original in the department's records; and

(3) deliver a certified copy of the amendment or

restatement to the state trust company.

(f) An amendment or restatement, if approved, takes effect on the date of approval, unless the amendment or restatement provides for a different effective date.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 70, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 20, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 21, eff. June 14, 2013.

Sec. 182.102. ESTABLISHING SERIES OF SHARES OR PARTICIPATION SHARES. (a) If the certificate of formation expressly gives the board authority to establish series and determine the preferences, limitations, and relative rights of each series, the board may do so only on compliance with this section and any rules adopted under this chapter.

(b) A series of shares or participation shares may be established in the manner provided by the Business Organizations Code, but the shares or participation shares of the series may not be issued and sold except on compliance with Section 182.103. The state trust company shall file the original and one copy of the statement of action required by the Business Organizations Code with the banking commissioner.

(c) Unless the submission presents novel or unusual questions, the banking commissioner shall approve or reject the series not later than the 31st day after the date the banking commissioner considers the submission informationally complete and accepted for filing. The banking commissioner may require the submission of additional information as considered necessary to an informed decision.

(d) If the banking commissioner finds that the interests of the clients and creditors of the state trust company will not be adversely affected by the series, that the series otherwise conforms to law and any conditions imposed by the banking commissioner, and that any required filing fee has been paid, the banking commissioner

shall:

(1) endorse the face of the original and copy of the statement with the date of approval and the word "Approved";

(2) file the original in the department's records; and

(3) deliver a certified copy of the statement to the state trust company.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 71, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 22, eff. June 14, 2013.

Sec. 182.103. CHANGE IN RESTRICTED CAPITAL. (a) A state trust company may not reduce or increase its restricted capital through dividend, redemption, issuance of shares or participation shares, or otherwise without the prior approval of the banking commissioner, except as permitted by this section or rules adopted under this chapter.

(b) Unless otherwise restricted by rules, prior approval is not required for an increase in restricted capital accomplished through:

(1) issuance of shares of common stock or their equivalent in participation shares for cash, or a cash contribution to surplus by shareholders or participants that does not result in issuance of additional common stock or other securities;

(2) declaration and payment of pro rata share dividends as defined by the Business Organizations Code; or

(3) adoption by the board of a resolution directing that all or part of undivided profits be transferred to restricted capital.

(c) Prior approval is not required for:

(1) a decrease in restricted capital caused by losses in excess of undivided profits; or

(2) a change in restricted capital resulting from accounting adjustments required by a transaction approved by the banking commissioner if the accounting adjustments are reasonably disclosed in the submitted application.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 13, eff. September 1, 2007.

Sec. 182.104. CAPITAL NOTES OR DEBENTURES. (a) With the prior written approval of the banking commissioner, a state trust company may at any time through action of its board, and without requiring action of its shareholders or participants, issue and sell its capital notes or debentures. The notes or debentures must be subordinate to the claims of depositors and may be subordinate to other claims, including the claims of other creditors or classes of creditors or the shareholders or participants.

(b) Capital notes or debentures may be convertible into shares or participation shares of any class or series. The issuance and sale of convertible capital notes or debentures are subject to satisfaction of preemptive rights, if any, to the extent provided by law.

(c) Without the prior written approval of the banking commissioner, a state trust company may not pay interest due or principal repayable on outstanding capital notes or debentures when the state trust company is in hazardous condition or insolvent, as determined by the banking commissioner, or to the extent that payment will cause the state trust company to be in hazardous condition or insolvent.

(d) The amount of any outstanding capital notes or debentures that meet the requirements of this section and that are subordinated to unsecured creditors of the state trust company may be included in equity capital of the state trust company for purposes of determining hazardous condition or insolvency, and for such other purposes provided by rules adopted under this subtitle.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.105. BOARD DESIGNATION OF CERTIFIED SURPLUS. Periodically the board may vote to designate and record in its

minutes the amount of certified surplus. Except to absorb losses in excess of undivided profits and uncertified surplus, certified surplus may not be reduced without the prior written approval of the banking commissioner.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

SUBCHAPTER C. STATE TRUST COMPANY OFFICES

Sec. 182.201. CONDUCT OF TRUST BUSINESS. A state trust company may engage in the trust business at its home office and at other locations as permitted by this subchapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.202. HOME OFFICE. (a) Each state trust company must have and continuously maintain in this state a home office. The home office must be a location at which the state trust company does business and keeps its corporate books and records. At least one executive officer must maintain an office at the home office.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 244, Sec. 3, eff. September 1, 2007.

(c) A state trust company may change its home office to any location in this state, if the location that is the home office before the change remains an office of the state trust company at which the state trust company does business. To change the location of its home office, the state trust company must file a written notice with the banking commissioner setting forth the name of the state trust company, the street address of its home office before the change, the street address to which the home office is to be changed, and a copy of the resolution adopted by the board authorizing the change. The change of home office takes effect on the 31st day after the date the banking commissioner receives the notice.

(d) A relocation of a state trust company's home office may not be made, and another action that would effect an abandonment of the state trust company's initial home office may not be taken, without the prior written approval of the banking commissioner. The state trust company must establish to the satisfaction of the banking

commissioner that the abandonment is consistent with the original determination of public convenience and advantage for the establishment of a state trust company at that location.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 244 (H.B. 2219), Sec. 3, eff. September 1, 2007.

Sec. 182.203. ADDITIONAL OFFICES. (a) A state trust company may establish and maintain additional offices. To establish an additional office, the state trust company must file a written notice with the banking commissioner setting forth the name of the state trust company, the street address of the proposed additional office, a description of the activities proposed to be conducted at the additional office, and a copy of the resolution adopted by the board authorizing the additional office.

(b) A state trust company may not commence business at the additional office before the 31st day after the date the banking commissioner receives the notice, unless the banking commissioner specifies an earlier or later date. The banking commissioner may specify a later date on a determination that the written notice raises issues that require additional information or additional time for analysis. If a later date is specified, the state trust company may establish the additional office only on prior written approval by the banking commissioner. The banking commissioner may deny permission to establish an additional office of the state trust company if the banking commissioner has a significant supervisory or regulatory concern regarding the proposed additional office, the applicant, or an affiliate.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.012(a), eff. Sept. 1, 2001.

SUBCHAPTER D. MERGER

Sec. 182.301. MERGER AUTHORITY. (a) Two or more trust institutions, corporations, or other entities with the authority to

participate in a merger, at least one of which is a state trust company, may adopt and implement a plan of merger in accordance with this section. The merger may not be made without the prior written approval of the banking commissioner if any surviving, new, or acquiring entity that is a party to the merger or created by the terms of the merger is a state trust company or is not a trust institution.

(b) Implementation of the plan of merger by the parties and approval of the board, shareholders, participants, or owners of the parties must be made or obtained as provided by the Business Organizations Code as if the state trust company were a filing entity and all other parties to the merger were foreign entities, except as otherwise provided by rules adopted under this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 72, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 23, eff. June 14, 2013.

Sec. 182.302. MERGER APPLICATION; GROUNDS FOR APPROVAL. (a) To apply for approval of a merger, the parties must submit the original certificate of merger, a number of copies of the certificate of merger equal to the number of surviving, new, and acquiring entities, and an application in the form required by the banking commissioner. The banking commissioner may require the submission of additional information as considered necessary to an informed decision.

(b) The banking commissioner shall investigate the condition of the merging parties.

(c) The banking commissioner may approve the merger if:

(1) each resulting state trust company:

(A) has complied with the statutes and rules relating to the organization of a state trust company; and

(B) will be solvent and have adequate capitalization for its business and location;

(2) all obligations and liabilities of each trust company

that is a party to the merger have been properly discharged or otherwise lawfully assumed or retained by a trust institution or other fiduciary;

(3) each surviving, new, or acquiring person that is not authorized to engage in the trust business will not engage in the trust business and has complied with the laws of this state; and

(4) all conditions imposed by the banking commissioner have been satisfied or otherwise resolved.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.013(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 24, eff. June 14, 2013.

Sec. 182.303. APPROVAL OF BANKING COMMISSIONER. (a) If the banking commissioner approves the merger and finds that all required filing fees and investigative costs have been paid, the banking commissioner shall:

(1) endorse the face of the original and each copy of the certificate of merger with the date of approval and the word "Approved";

(2) file the original in the department's records; and

(3) deliver a certified copy of the certificate of merger to each surviving, new, or acquiring entity.

(b) A merger is effective on the date of approval, unless the merger agreement provides and the banking commissioner consents to a different effective date.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 25, eff. June 14, 2013.

Sec. 182.304. RIGHTS OF DISSENTERS TO MERGER. A shareholder, participant, or participant-transferee may dissent from the merger to the extent and by following the procedure provided by the Business

Organizations Code or rules adopted under this subtitle.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 73, eff. September 1, 2007.

SUBCHAPTER E. PURCHASE OR SALE OF ASSETS

Sec. 182.401. AUTHORITY TO PURCHASE ASSETS. (a) A state trust company may purchase assets from another trust institution, including the right to control accounts established with the trust institution, or assets from another seller, except that the prior written approval of the banking commissioner is required if the purchase price exceeds an amount equal to three times the sum of the trust company's equity capital less intangible assets. The finance commission by rule may require a state trust company to obtain the prior written approval of the banking commissioner for a transaction not otherwise subject to approval that involves potentially substantial risks to the safety and soundness of the purchasing trust company.

(b) Except as otherwise expressly provided by this section or another statute, the purchase of all or part of the assets of the selling entity does not make the purchasing state trust company responsible for any liability or obligation of the selling entity that the purchasing state trust company does not expressly assume.

(c) If prior approval of the banking commissioner is required under this section, an application in the form required by the banking commissioner must be filed with the banking commissioner. The banking commissioner shall investigate the condition of the purchaser and seller and may require the submission of additional information as considered necessary to make an informed decision.

(d) The banking commissioner shall approve the application to purchase if:

(1) the purchasing state trust company:

(A) has complied with all applicable statutes and rules; and

(B) will be solvent and have sufficient capitalization for its business and location;

(2) all fiduciary obligations and liabilities of each trust

institution that is a party to the purchase or sale of assets have been properly discharged or otherwise lawfully assumed or retained by a trust institution or other fiduciary;

(3) all conditions imposed by the banking commissioner have been satisfied or otherwise resolved; and

(4) all fees and costs have been paid.

(e) A purchase subject to prior approval is effective on the date of approval unless the purchase agreement provides for and the banking commissioner consents to a different effective date.

(f) If the purchase transaction includes all or substantially all of the assets of another trust institution or other fiduciary, the acquiring state trust company shall succeed by operation of law to all of the rights, privileges, and fiduciary obligations of the selling trust institution or other fiduciary under each account included in the assets acquired.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.014(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 14, eff. September 1, 2007.

Sec. 182.402. AUTHORITY TO ACT AS DISBURSING AGENT. (a) The purchasing state trust company may hold the purchase price and any additional funds delivered to it by the selling institution in trust for the selling institution and may act as agent of the selling institution in disbursing those funds in trust by paying the creditors of the selling institution.

(b) If the purchasing state trust company acts under written contract of agency approved by the banking commissioner that specifically names each creditor and the amount to be paid each, and if the agency is limited to the purely ministerial act of paying creditors the amounts due them as determined by the selling institution and reflected in the contract of agency and does not involve discretionary duties or authority other than the identification of the creditors named, the purchasing trust company:

(1) may rely on the contract of agency and the instructions included in it; and

(2) is not responsible for:

(A) any error made by the selling institution in determining its liabilities and creditors to whom the liabilities are due or the amounts due the creditors; or

(B) any preference that results from the payments made under the contract of agency and the instructions included in it.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.403. LIQUIDATION OF SELLING INSTITUTION. If the selling institution is at any time after the sale of assets voluntarily or involuntarily closed for liquidation by a state or federal regulatory agency, the purchasing state trust company shall pay to the receiver of the selling institution the balance of the money held by it in trust for the selling institution and not yet paid to the creditors of the selling institution. Without further action the purchasing state trust company is discharged of all responsibilities to the selling institution, its receiver, or its creditors, shareholders, participants, or participant-transferees.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.404. PAYMENT TO CREDITORS. The purchasing state trust company may pay a creditor of the selling institution the amount to be paid the creditor under the terms of the contract of agency by opening an agency account in the name of the creditor, crediting the account with the amount to be paid the creditor under the terms of the agency contract, and mailing or personally delivering a duplicate ticket evidencing the credit to the creditor at the creditor's address shown in the records of the selling institution. The relationship between the purchasing state trust company and the creditor is that of agent to creditor only to the extent of the credit reflected by the ticket.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 182.405. SALE OF ASSETS. (a) A state trust company may sell all or any portion of its assets to another trust institution or other buyer, except that the prior written approval of the banking commissioner is required if the sales price exceeds an amount equal to three times the sum of the trust company's equity capital less intangible assets. The finance commission by rule may require a state trust company to obtain the prior written approval of the banking commissioner for a transaction not otherwise subject to approval that involves potentially substantial risks to the safety and soundness of the selling trust company.

(b) If the prior approval of the banking commissioner for a sale of assets is not required under Subsection (a) and the sale involves the disposition of an established location of the state trust company, the state trust company must provide written notice of the transaction to the banking commissioner at least 30 days before the expected closing date of the transaction.

(c) The board of a state trust company, with the banking commissioner's approval, may cause the state trust company to sell all or substantially all of its assets, including the right to control accounts established with the state trust company, without shareholder or participant approval if:

(1) the banking commissioner finds that the interests of the state trust company's clients, depositors, and creditors are jeopardized because of the hazardous condition of the state trust company and that the sale is in their best interest; and

(2) the Federal Deposit Insurance Corporation or its successor approves the transaction, if the deposits of the state trust company are insured.

(d) A sale under Subsection (c) must include an assumption and promise by the buyer to pay or otherwise discharge:

(1) all of a state trust company's liabilities to clients and depositors;

(2) all of the state trust company's liabilities for salaries of the state trust company's employees incurred before the date of the sale;

(3) obligations incurred by the banking commissioner arising out of the supervision or sale of the state trust company; and

(4) fees and assessments due the department.

(e) This section does not affect the banking commissioner's

right to take action under another law. The sale by a state trust company of all or substantially all of its assets with shareholder or participant approval is considered a voluntary dissolution and liquidation and is governed by Subchapter B, Chapter 186.

(f) Each buyer in a transaction described by Subsection (c) that is a trust institution or other fiduciary shall succeed by operation of law to all of the rights, privileges, and fiduciary obligations of the selling state trust company under each account included in the assets acquired.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.015(a), eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 15, eff. September 1, 2007.

SUBCHAPTER F. EXIT OF STATE TRUST COMPANY OR ENTRY OF ANOTHER TRUST INSTITUTION

Sec. 182.501. MERGER OR CONVERSION OF STATE TRUST COMPANY INTO ANOTHER TRUST INSTITUTION EXERCISING FIDUCIARY POWERS. (a) Subject to Chapter 187, a state trust company may act as necessary and to the extent permitted by the laws of the United States, this state, another state, or another country to merge or convert into another form of trust institution.

(b) The merger or conversion must be made and approval of the state trust company's board, shareholders, or participants must be obtained in accordance with the Business Organizations Code as if the state trust company were a filing entity and all other parties to the transaction, if any, were foreign entities, except as may be otherwise provided by rule. For purposes of this subsection, a conversion is considered a merger into the successor trust institution.

(c) The state trust company does not cease to be a state trust company subject to the supervision of the banking commissioner unless:

(1) the banking commissioner has been given written notice of the intention to merge or convert before the 31st day before the date of the proposed transaction;

(2) the state trust company has filed with the banking commissioner:

(A) a copy of the application filed with the successor regulatory authority, including a copy of each contract evidencing or implementing the merger or conversion, or other documents sufficient to show compliance with applicable law; and

(B) a certified copy of all minutes of board meetings and shareholder or participant meetings at which action was taken regarding the merger or conversion;

(3) the banking commissioner determines that:

(A) all accounts and liabilities of the state trust company are fully discharged, assumed, or otherwise retained by the successor trust institution;

(B) any conditions imposed by the banking commissioner for the protection of clients and creditors have been met or otherwise resolved; and

(C) any required filing fees have been paid; and

(4) the state trust company has received a certificate of authority to do business as the successor trust institution.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.016(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 74, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 16, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 26, eff. June 14, 2013.

Sec. 182.502. CONVERSION OF TRUST INSTITUTION INTO STATE TRUST COMPANY. (a) A trust institution may apply to the banking commissioner for conversion into a state trust company on a form prescribed by the banking commissioner and accompanied by any required fee if the trust institution follows the procedures prescribed by the laws of the United States, this state, another state, or another country governing the exit of the trust institution for the purpose of conversion into a state trust company from the

regulatory system applicable before the conversion. A trust association or limited trust association may convert its organizational form under this section.

(b) A trust institution applying to convert into a state trust company may receive a certificate of authority to do business as a state trust company if the banking commissioner finds that:

(1) the trust institution is not engaging in a pattern or practice of unsafe and unsound fiduciary or banking practices;

(2) the trust institution has adequate capitalization for a state trust company to act as a fiduciary at the same locations as the trust institution is acting as a fiduciary before the conversion;

(3) the trust institution can be expected to operate profitably after the conversion;

(4) the officers and directors of the trust institution as a group have sufficient banking experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the trust institution will operate as a state trust company in compliance with law; and

(5) each principal shareholder has sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the trust institution will be free from improper or unlawful influence or interference with respect to the trust institution's operation as a state trust company in compliance with law.

(c) The banking commissioner may:

(1) request additional information considered necessary to make an informed decision under this section;

(2) perform an examination of the converting trust institution at the expense of the converting trust institution; and

(3) require that examination fees be paid before a certificate of authority is issued.

(d) In connection with the application, the converting trust institution must:

(1) submit a statement of the law governing the exit of the trust institution from the regulatory system applicable before the conversion and the terms of the transition into a state trust company; and

(2) demonstrate that all applicable law has been fully satisfied.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.016(a), eff. Sept. 1, 2001.

CHAPTER 183. OWNERSHIP AND MANAGEMENT OF STATE TRUST COMPANY

SUBCHAPTER A. TRANSFER OF OWNERSHIP INTEREST

Sec. 183.001. ACQUISITION OF CONTROL. (a) Except as expressly permitted by this subtitle, without the prior written approval of the banking commissioner a person may not directly or indirectly acquire a legal or beneficial interest in voting securities of a state trust company or a corporation or other entity owning voting securities of a state trust company if, after the acquisition, the person would control the state trust company.

(b) For purposes of this subchapter and except as otherwise provided by rules adopted under this subtitle, the principal shareholder or principal participant of a state trust company that directly or indirectly owns or has the power to vote a greater percentage of voting securities of the state trust company than any other shareholder or participant is considered to control the state trust company.

(c) This subchapter does not prohibit a person from negotiating to acquire, but not acquiring, control of a state trust company or a person that controls a state trust company.

(d) This section does not apply to:

(1) the acquisition of securities in connection with the exercise of a security interest or otherwise in full or partial satisfaction of a debt previously contracted for in good faith if the acquiring person files written notice of acquisition with the banking commissioner before the person votes the securities acquired;

(2) the acquisition of voting securities in any class or series by a controlling person who has previously complied with and received approval under this subchapter or who was identified as a controlling person in a prior application filed with and approved by the banking commissioner;

(3) an acquisition or transfer by operation of law, will, or intestate succession if the acquiring person files written notice of acquisition with the banking commissioner before the person votes the securities acquired; or

(4) a transaction exempted by the banking commissioner or by rules adopted under this subtitle because the transaction is not

within the purposes of this subchapter or the regulation of which is not necessary or appropriate to achieve the objectives of this subchapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 183.002. APPLICATION REGARDING ACQUISITION OF CONTROL. (a) The transferee in an acquisition of control of a state trust company or of a person that controls a state trust company must file an application for approval of the acquisition. The application must:

(1) be under oath and on a form prescribed by the banking commissioner;

(2) contain all information that:

(A) is required by rules adopted under this subtitle; or

(B) the banking commissioner requires in a particular application as necessary to an informed decision to approve or reject the acquisition; and

(3) be accompanied by any filing fee required by statute or rule.

(b) If a person proposing to acquire voting securities in a transaction subject to this section includes a group of persons acting in concert, the information required by the banking commissioner may be required of each member of the group.

(c) Rules adopted under this subtitle may specify the confidential or nonconfidential character of information obtained by the banking commissioner under this section. In the absence of rules, information obtained by the banking commissioner under this section is confidential and may not be disclosed by the banking commissioner or any employee of the department except as provided by Subchapter D, Chapter 181.

(d) The applicant shall publish notice of the application, its date of filing, the identity of each applicant, and, if the applicant includes a group, the identity of each group member. The notice must be published in the form and frequency specified by the banking commissioner and in a newspaper of general circulation in the county where the state trust company's home office is located, or in another

publication or location as directed by the banking commissioner.

(e) The applicant may defer publication of the notice until not later than the 34th day after the date the application is filed if:

(1) the application is filed in contemplation of a public tender offer subject to 15 U.S.C. Section 78n(d)(1);

(2) the applicant requests confidential treatment and represents that a public announcement of the tender offer and the filing of appropriate forms with the Securities and Exchange Commission or the appropriate federal banking agency, as applicable, will occur within the period of deferral; and

(3) the banking commissioner determines that the public interest will not be harmed by the requested confidential treatment.

(f) The banking commissioner may waive the requirement that a notice be published or permit delayed publication on a determination that waiver or delay is in the public interest. If publication of notice is waived under this subsection, the information that would be contained in a published notice becomes public information under Chapter 552, Government Code, on the 35th day after the date the application is filed.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.08, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 17, eff. September 1, 2007.

Sec. 183.003. HEARING AND DECISION ON ACQUISITION OF CONTROL. (a) Not later than the 60th day after the date the notice is published, the banking commissioner shall approve the application or set the application for hearing. If the banking commissioner sets a hearing, the department shall participate as the opposing party and the banking commissioner shall conduct a hearing and one or more prehearing conferences and opportunities for discovery as the banking commissioner considers advisable and consistent with governing statutes and rules. A hearing held under this section is confidential and closed to the public.

(b) Based on the record, the banking commissioner may issue an order denying an application if:

(1) the acquisition would substantially lessen competition, be in restraint of trade, result in a monopoly, or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the trust industry in any part of this state, unless:

(A) the anticompetitive effects of the acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served; and

(B) the acquisition is not in violation of the law of this state or the United States;

(2) the financial condition of the transferee, or any member of a group comprising the transferee, might jeopardize the financial stability of the state trust company being acquired;

(3) plans or proposals to operate, liquidate, or sell the state trust company or its assets are not in the best interest of the state trust company;

(4) the experience, ability, standing, competence, trustworthiness, and integrity of the transferee, or any member of a group comprising the transferee, are insufficient to justify a belief that the state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law;

(5) the state trust company will not be solvent, have adequate capitalization, or be in compliance with the laws of this state after the acquisition;

(6) the transferee has failed to furnish all information pertinent to the application reasonably required by the banking commissioner; or

(7) the transferee is not acting in good faith.

(c) If the banking commissioner approves the application, the transaction may be consummated. If the approval is conditioned on a written commitment from the transferee offered to and accepted by the banking commissioner, the commitment is:

(1) enforceable against the state trust company and the transferee; and

(2) considered for all purposes an agreement under this subtitle.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 183.004. APPEAL FROM ADVERSE DECISION. (a) If a hearing has been held, the banking commissioner has entered an order denying the application, and the order has become final, the transferee may appeal the final order by filing a petition for judicial review.

(b) The filing of an appeal under this section does not stay the order of the banking commissioner.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 183.005. OBJECTION TO OTHER TRANSFER. This subchapter does not prevent the banking commissioner from investigating, commenting on, or seeking to enjoin or set aside a transfer of voting securities that evidence a direct or indirect interest in a state trust company, regardless of whether the transfer is governed by this subchapter, if the banking commissioner considers the transfer to be against the public interest.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 183.006. CIVIL ENFORCEMENT; CRIMINAL PENALTY. (a) If the banking commissioner believes that a person has violated or is about to violate this subchapter or a rule or order of the banking commissioner relating to this subchapter, the attorney general on behalf of the banking commissioner may apply to a district court in Travis County for an order enjoining the violation and for other equitable relief the nature of the case requires.

(b) A person who knowingly fails or refuses to file the application required by Section 183.002 commits an offense. An offense under this subsection is a Class A misdemeanor.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

SUBCHAPTER B. BOARD AND OFFICERS

Sec. 183.101. VOTING SECURITIES HELD BY TRUST COMPANY. (a) Voting securities of a state trust company held by the state trust company in a fiduciary capacity under a will or trust, whether registered in its own name or in the name of its nominee, may not be voted in the election of directors or managers or on a matter affecting the compensation of directors, managers, officers, or employees of the state trust company in that capacity, unless:

(1) under the terms of the will or trust, the manner in which the voting securities are to be voted may be determined by a donor or beneficiary of the will or trust and the donor or beneficiary actually makes the determination in the matter at issue;

(2) the terms of the will or trust expressly direct the manner in which the securities must be voted to the extent that discretion is not vested in the state trust company as fiduciary; or

(3) the securities are voted solely by a cofiduciary that is not an affiliate of the state trust company, as if the cofiduciary were the sole fiduciary.

(b) Voting securities of a state trust company that cannot be voted under this section are considered to be authorized but unissued for purposes of determining the procedures for and results of the affected vote.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 183.102. BYLAWS. Except as provided by Section 183.207, each state trust company shall adopt bylaws and may amend its bylaws from time to time for the purposes and in accordance with the procedures set forth in the Business Organizations Code.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 75, eff. September 1, 2007.

Sec. 183.103. BOARD OF DIRECTORS, MANAGERS, OR MANAGING PARTICIPANTS. (a) The board of a state trust company must consist of not fewer than five or more than 25 directors, managers, or

managing participants, the majority of whom must be residents of this state. Except for a limited trust association in which management has been retained by its participants, the principal executive officer of the state trust company is a member of the board. The principal executive officer acting in the capacity of board member is the board's presiding officer unless the board elects a different presiding officer to perform the duties as designated by the board.

(b) Unless the banking commissioner consents otherwise in writing, a person may not serve as director, manager, or managing participant of a state trust company if:

(1) the state trust company incurs an unreimbursed loss attributable to a charged-off obligation of or holds a judgment against:

(A) the person; or

(B) an entity that was controlled by the person at the time of funding and at the time of default on the loan that gave rise to the judgment or charged-off obligation;

(2) the person is the subject of an order described by Section 185.007(a);

(3) the person has been convicted of a felony; or

(4) the person has violated, with respect to a trust under which the state trust company has fiduciary responsibility, Section 113.052 or 113.053(a), Property Code, relating to loan of trust funds and purchase or sale of trust property by the trustee, and the violation has not been corrected.

(c) If a state trust company other than a limited trust association operated by managing participants does not elect directors or managers before the 61st day after the date of its regular annual meeting, the banking commissioner may appoint a conservator under Chapter 185 to operate the state trust company and elect directors or managers, as appropriate. If the conservator is unable to locate or elect persons willing and able to serve as directors or managers, the banking commissioner may close the state trust company for liquidation.

(d) A vacancy on the board that reduces the number of directors, managers, or managing participants to fewer than five must be filled not later than the 30th day after the date the vacancy occurs. A limited trust association with fewer than five managing participants must add one or more new participants or elect a board of managers of not fewer than five persons to resolve the vacancy.

After the 30th day after the date the vacancy occurs, the banking commissioner may appoint a conservator under Chapter 185 to operate the state trust company and elect a board of not fewer than five persons to resolve the vacancy. If the conservator is unable to locate or elect five persons willing and able to serve as directors or managers, the banking commissioner may close the state trust company for liquidation.

(e) Before each term to which a person is elected to serve as a director or manager of a state trust company, or annually for a person who is a managing participant, the person shall submit an affidavit for filing in the minutes of the state trust company stating that the person, to the extent applicable:

(1) accepts the position and is not disqualified from serving in the position;

(2) will not violate or knowingly permit an officer, director, manager, managing participant, or employee of the state trust company to violate any law applicable to the conduct of business of the trust company; and

(3) will diligently perform the duties of the position.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.09, eff. Sept. 1, 2001.

Sec. 183.104. ADVISORY DIRECTOR OR ADVISORY MANAGER. (a) An advisory director or advisory manager is not considered to be a director if the advisory director or advisory manager:

(1) is not elected by the shareholders or participants of the state trust company;

(2) does not vote on matters before the board or a committee of the board;

(3) is not counted for purposes of determining a quorum of the board or committee; and

(4) provides solely general policy advice to the board.

(b) A state trust company may not disclose to an advisory director or advisory manager confidential information pertaining to the state trust company or the company's clients unless:

(1) the board adopts a resolution that designates the advisory director or advisory manager as a person who is officially

connected to the trust company and that describes the purpose for disclosure of the information, which must be a reasonable business purpose; and

(2) the disclosure is made under a written confidentiality agreement between the state trust company and the advisory director or advisory manager.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 13, eff. June 14, 2013.

Sec. 183.105. REQUIRED QUARTERLY BOARD MEETING. (a) The board of a state trust company shall hold at least one regular meeting each quarter.

(b) At each regular meeting the board shall review and approve the minutes of the preceding meeting and review the operations, activities, and financial condition of the state trust company. The board may designate committees from among its members to perform those duties and approve or disapprove the committees' reports at each regular meeting.

(c) All actions of the board must be recorded in its minutes.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 183.106. OFFICERS. (a) The board shall annually appoint the officers of the state trust company, who serve at the will of the board. Unless the banking commissioner consents otherwise in writing, a person may not serve as an officer of a state trust company if:

(1) the person is the subject of an order described by Section 185.007(a);

(2) the person has been convicted of a felony; or

(3) the person has violated, with respect to a trust under which the state trust company has fiduciary responsibility, Section 113.052 or 113.053(a), Property Code, relating to loan of trust funds and purchase or sale of trust property by the trustee, and the

violation has not been corrected.

(b) The state trust company must have a principal executive officer primarily responsible for the execution of board policies and operation of the state trust company and an officer responsible for the maintenance and storage of all corporate books and records of the state trust company and for required attestation of signatures. Those positions may not be held by the same person.

(c) The board may appoint other officers of the state trust company as the board considers necessary.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 14, eff. September 1, 2017.

Sec. 183.107. LIMITATION ON ACTION OF OFFICER OR EMPLOYEE IN RELATION TO ASSET OR LIABILITY. Unless expressly authorized by a resolution of the board recorded in its minutes, an officer or employee may not create or dispose of a state trust company asset or create or incur a liability on behalf of the state trust company.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 183.108. CERTAIN CRIMINAL OFFENSES. (a) An officer, director, manager, managing participant, employee, shareholder, or participant of a state trust company commits an offense if the person knowingly:

(1) conceals information or removes, destroys, or conceals a book or record of the state trust company for the purpose of concealing information from the banking commissioner or an agent of the banking commissioner; or

(2) for the purpose of concealing, removes or destroys any book or record of the state trust company that is material to a pending or anticipated legal or administrative proceeding.

(b) An officer, director, manager, managing participant, or employee of a state trust company commits an offense if the person knowingly makes a false entry in a book, record, report, or statement

of the state trust company.

(c) An offense under this section is a felony of the third degree.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 183.109. TRANSACTIONS WITH MANAGEMENT AND AFFILIATES. (a) Without the prior approval of a disinterested majority of the board recorded in the minutes, or if a disinterested majority cannot be obtained, the prior written approval of the banking commissioner, a state trust company may not directly or indirectly:

(1) sell or lease an asset of the state trust company to an officer, director, manager, managing participant, or principal shareholder or participant of the state trust company or an affiliate of the state trust company;

(2) purchase or lease an asset in which an officer, director, manager, managing participant, or principal shareholder or participant of the state trust company or an affiliate of the state trust company has an interest; or

(3) subject to Section 184.201, extend credit to an officer, director, manager, managing participant, or principal shareholder or participant of the state trust company or an affiliate of the state trust company.

(b) Notwithstanding Subsection (a), a lease transaction described in Subsection (a)(2) involving real property may not be consummated, renewed, or extended without the prior written approval of the banking commissioner. For purposes of this subsection only, an affiliate of a state trust company does not include a subsidiary of the state trust company.

(c) Subject to Section 184.201, a state trust company may not directly or indirectly extend credit to an employee, officer, director, manager, managing participant, or principal shareholder or participant of the state trust company or to an affiliate of the state trust company, unless:

(1) the extension of credit is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the state trust company with persons who are not employees, officers, directors,

managers, managing participants, principal shareholders, participants, or affiliates of the state trust company;

(2) the extension of credit does not involve more than the normal risk of repayment or present other unfavorable features; and

(3) the state trust company follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the state trust company with persons who are not employees, officers, directors, managers, managing participants, principal shareholders, participants, or affiliates of the state trust company.

(d) An officer, director, manager, or managing participant of a state trust company who knowingly participates in or permits a violation of this section commits an offense. An offense under this subsection is a felony of the third degree.

(e) The finance commission may adopt rules to administer and carry out this section, including rules to establish limits, requirements, or exemptions other than those specified by this section for particular categories of transactions.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 183.110. FIDUCIARY RESPONSIBILITY. The board of a state trust company is responsible for the proper exercise of fiduciary powers by the state trust company and each matter pertinent to the exercise of fiduciary powers, including:

(1) the determination of policies;

(2) the investment and disposition of property held in a fiduciary capacity; and

(3) the direction and review of the actions of each officer, employee, and committee used by the state trust company in the exercise of its fiduciary powers.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 183.111. RECORDKEEPING. A state trust company shall keep its fiduciary records separate and distinct from other records of the state trust company in compliance with applicable rules adopted under

this subtitle. The fiduciary records must contain all appropriate material information relative to each account.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 183.112. BONDING REQUIREMENTS. (a) The board of a state trust company shall require a bond for the protection and indemnity of clients, in reasonable amounts established by rules adopted under this subtitle, against dishonesty, fraud, defalcation, forgery, theft, and other similar insurable losses. The bond must be with a corporate insurance or surety company:

(1) authorized to do business in this state; or

(2) acceptable to the banking commissioner and otherwise lawfully permitted to issue the coverage against those losses in this state.

(b) Except as otherwise provided by rule, a bond is required to cover each director, manager, managing participant, officer, and employee of a state trust company without regard to whether the person receives salary or other compensation.

(c) A state trust company may apply to the banking commissioner for permission to eliminate the bonding requirement of this section for a particular individual. The banking commissioner shall approve the application if the banking commissioner finds that the bonding requirement is unnecessary or burdensome. Unless the application presents novel or unusual questions, the banking commissioner shall approve the application or set the application for hearing not later than the 61st day after the date the banking commissioner considers the application complete and accepted for filing.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 183.113. REPORTS OF APPARENT CRIME. (a) A state trust company that is the victim of a robbery, has a shortage of corporate or fiduciary funds in excess of $5,000, or is the victim of an apparent or suspected misapplication of its corporate or fiduciary funds or property in any amount by a director, manager, managing participant, officer, or employee shall report the robbery, shortage,

or apparent or suspected misapplication of funds or property to the banking commissioner within 48 hours after the time it is discovered. The initial report may be oral if the report is promptly confirmed in writing. The state trust company or a director, manager, managing participant, officer, employee, or agent is not subject to liability for defamation or another charge resulting from information supplied in the report.

(b) A report filed with the banking commissioner under this section may be a copy of a written report filed with an appropriate federal agency.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

SUBCHAPTER C. LIMITED TRUST ASSOCIATION

Sec. 183.201. LIABILITY OF PARTICIPANTS AND MANAGERS. (a) Except as provided by Subsection (b), a participant, participant-transferee, or manager of a limited trust association is not liable for a debt, obligation, or liability of the limited trust association, including a debt, obligation, or liability under a judgment, decree, or order of court. A participant, other than a full liability participant, or a manager of a limited trust association is not a proper party to a proceeding by or against a limited trust association unless the object of the proceeding is to enforce the participant's or manager's right against or liability to a limited trust association.

(b) A full liability participant of a limited trust association is liable under a judgment, decree, or order of court for a debt, obligation, or liability of the limited trust association that accrued during the participation of the full liability participant in the limited trust association and before the full liability participant or a successor in interest filed with the banking commissioner a notice of withdrawal as a full liability participant from the limited trust association. The filed notice of withdrawal is a public record.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 183.202. FILING OF NOTICE OF FULL LIABILITY. (a) A limited trust association shall file with the banking commissioner a copy of any participation agreement by which a participant of the limited trust association agrees to become a full liability participant and the name and address of each full liability participant. Only the portion of the filed copy containing the designation of each full liability participant is a public record.

(b) The banking commissioner may require a complete copy of the participation agreement to be filed with the department, regardless of whether a state trust company has a full liability participant, except that the provisions of the participation agreement other than those by which a participant of the limited trust association agrees to become a full liability participant are confidential and subject to release only as provided by Subchapter D, Chapter 181.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 183.203. CONTRACTING FOR DEBT OR OBLIGATION. Except as provided by this section or the certificate of formation of the limited trust association, a debt, liability, or other obligation may be contracted for or incurred on behalf of a limited trust association only by:

(1) a majority of the managers, if management of the limited trust association has been vested in a board of managers;

(2) a majority of the managing participants; or

(3) an officer or other agent vested with actual or apparent authority to contract for or incur the debt, liability, or other obligation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 27, eff. June 14, 2013.

Sec. 183.204. MANAGEMENT OF LIMITED TRUST ASSOCIATION. (a) Management of a limited trust association is vested in the participants in proportion to each participant's contribution to

capital, as adjusted periodically to properly reflect any additional contribution. The certificate of formation may provide that management of a limited trust association is vested in a board of managers to be elected annually by the participants as prescribed by the bylaws or the participation agreement.

(b) Participants of a limited trust association may not retain management and must elect a board of managers if:

(1) any participant is disqualified from serving as a managing participant under Section 183.103;

(2) the limited trust association has fewer than five or more than 25 participants; or

(3) any participant has been removed by the banking commissioner under Subchapter A, Chapter 185.

(c) The certificate of formation, bylaws, and participation agreement of a limited trust association may use the term "director" instead of "manager" and the term "board" instead of "board of managers."

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 28, eff. June 14, 2013.

Sec. 183.205. WITHDRAWAL OR REDUCTION OF PARTICIPANT'S CONTRIBUTION TO CAPITAL. (a) Except as otherwise provided by this chapter, a participant may not receive from a limited trust association any part of the participant's contribution to capital unless:

(1) all liabilities of the limited trust association, except liabilities to participants on account of contribution to capital, have been paid;

(2) after the withdrawal or reduction, sufficient property of the limited trust association will remain to pay all liabilities of the limited trust association, except liabilities to participants on account of contribution to capital;

(3) all participants consent; or

(4) the certificate of formation is canceled or amended to set out the withdrawal or reduction.

(b) A participant may demand the return of the participant's contribution to capital on the dissolution of the association and the failure of the full liability participants to exercise the right to carry on the business of the limited trust association as provided by Section 183.208.

(c) A participant may demand the return of the participant's contribution to capital only in cash unless a different form of return of the contribution is allowed by the certificate of formation or by the unanimous consent of all participants.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 29, eff. June 14, 2013.

Sec. 183.206. INTEREST IN LIMITED TRUST ASSOCIATION; TRANSFERABILITY OF INTEREST. (a) The interest of a participant or participant-transferee in a limited trust association is the personal property of the participant or the participant-transferee and may be transferred as provided by the bylaws or the participation agreement.

(b) A transferee of a participant's interest has the status of a participant-transferee and does not by the transfer become a participant or obtain a right to participate in the management of the limited trust association.

(c) A participant-transferee is entitled to receive only a share of profits, return of contribution, or other distributive benefit in respect to the interest transferred to which the participant who transferred the interest would have been entitled.

(d) A participant-transferee may become a participant only as provided by the bylaws or the participation agreement.

(e) A limited trust association may add additional participants in the same manner as participant-transferees after payment in full of the capital contribution to the limited trust association payable for the issuance of additional participation interests.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 183.207. BYLAWS OF LIMITED TRUST ASSOCIATION. (a) A limited trust association in which management is retained by the participants is not required to adopt bylaws if the provisions required by law to be contained in the bylaws are contained in the certificate of formation or the participation agreement.

(b) If a limited trust association has adopted bylaws that designate each full liability participant, the limited trust association shall file a copy of the bylaws with the banking commissioner. Only the portion of the bylaws designating each full liability participant is a public record.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 30, eff. June 14, 2013.

Sec. 183.208. DISSOLUTION. (a) A limited trust association organized under this chapter is dissolved on:

(1) the expiration of the period fixed for the duration of the limited trust association;

(2) a vote to dissolve or the execution of a written consent to dissolve by all full liability participants, if any, and a sufficient number of other participants that, combined with all full liability participants, hold at least two-thirds of the participation shares in each class in the association, or a greater fraction as provided by the certificate of formation;

(3) except as provided by the certificate of formation, the death, insanity, expulsion, bankruptcy, retirement, or resignation of a participant unless a majority in interest of all remaining participants elect in writing not later than the 90th day after the date of the event to continue the business of the association; or

(4) the occurrence of an event of dissolution specified in the certificate of formation.

(b) A dissolution under this section is considered to be the initiation of a voluntary dissolution under Subchapter B, Chapter 186.

(c) An event of dissolution described by Subsection (a)(3) does not cancel or revoke a contract to which the limited trust

association is a party, including a trust indenture or agreement or voluntary dissolution under Subchapter B, Chapter 186, until the period for the remaining participants to continue the business of the limited trust association has expired without the remaining participants having completed the necessary action to continue the business of the limited trust association.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 31, eff. June 14, 2013.

Sec. 183.209. ALLOCATION OF PROFITS AND LOSSES. The profits and losses of a limited trust association may be allocated among the participants and among classes of participants as provided by the participation agreement. Without the prior written approval of the banking commissioner to use a different allocation method, the profits and losses must be allocated according to the relative interests of the participants as reflected in the certificate of formation and related documents filed with and approved by the banking commissioner.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 32, eff. June 14, 2013.

Sec. 183.210. DISTRIBUTIONS. Subject to Section 182.103, distributions of cash or other assets of a limited trust association may be made to the participants as provided by the participation agreement. Without the prior written approval of the banking commissioner to use a different distribution method, distributions must be made to the participants according to the relative interests of the participants as reflected in the certificate of formation and related documents filed with and approved by the banking commissioner.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 33, eff. June 14, 2013.

Sec. 183.211. APPLICATION OF OTHER PROVISIONS TO LIMITED TRUST ASSOCIATIONS. For purposes of applying the provisions of this subtitle other than this subchapter to a limited trust association, as the context requires:

(1) a manager and the board of managers are considered to be a director and the board of directors;

(2) if there is not a board of managers, a participant is considered to be a director and all of the participants are considered to be the board of directors;

(3) a participant or participant-transferee is considered to be a shareholder;

(4) a participation share is considered to be a share of stock; and

(5) a distribution is considered to be a dividend.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

CHAPTER 184. INVESTMENTS, LOANS, AND DEPOSITS

SUBCHAPTER A. ACQUISITION AND OWNERSHIP OF TRUST COMPANY FACILITIES AND OTHER REAL PROPERTY

Sec. 184.001. DEFINITION. In this subchapter, "state trust company facility" means real property, including an improvement, that a state trust company owns or leases, to the extent the lease or the leasehold improvement is capitalized, for the purpose of:

(1) providing space for state trust company employees to perform their duties and for state trust company employees and customers to park;

(2) conducting trust business, including meeting the reasonable needs and convenience of the public and the state trust company's clients, computer operations, document and other item processing, maintenance, and record retention and storage;

(3) holding, improving, and occupying as an incident to future expansion of the state trust company's facilities; or

(4) conducting another activity authorized by rules adopted under this subtitle.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 184.002. INVESTMENT IN STATE TRUST COMPANY FACILITIES. (a) Without the prior written approval of the banking commissioner, a state trust company may not directly or indirectly invest an amount in excess of the company's restricted capital in state trust company facilities, furniture, fixtures, and equipment. Except as otherwise provided by rules adopted under this subtitle, in computing the limitation provided by this subsection a state trust company:

(1) shall include:

(A) its direct investment in state trust company facilities;

(B) an investment in equity or investment securities of a company holding title to a facility used by the state trust company for the purposes specified by Section 184.001;

(C) a loan made by the state trust company to or on the security of equity or investment securities issued by a company holding title to a facility used by the state trust company; and

(D) any indebtedness incurred on state trust company facilities by a company:

(i) that holds title to the facility;

(ii) that is an affiliate of the state trust company; and

(iii) in which the state trust company is invested in the manner described by Paragraph (B) or (C); and

(2) may exclude an amount included under Subdivisions (1)(B)-(D) to the extent any lease of a facility from the company holding title to the facility is capitalized on the books of the state trust company.

(b) Real property described by Subsection 184.001(3) and not improved and occupied by the state trust company ceases to be a state trust company facility on the third anniversary of the date of its acquisition unless the banking commissioner on application grants

written approval to further delay in the improvement and occupation of the property by the state trust company.

(c) A state trust company shall dispose of any real property subject to Subsection (a) not later than the fifth anniversary of the date the real property:

(1) was acquired, except as otherwise provided by rules adopted under this subtitle;

(2) ceases to be used as a state trust company facility; or

(3) ceases to be a state trust company facility as provided by Subsection (b).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

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

Sec. 184.003. OTHER REAL PROPERTY. (a) A state trust company may not invest its restricted capital in real property except:

(1) as permitted by this subtitle or rules adopted under this subtitle; or

(2) as necessary to avoid or minimize a loss on a loan or investment previously made in good faith.

(b) With the prior written approval of the banking commissioner, a state trust company may:

(1) exchange real property for other real property or personal property;

(2) invest additional money in or improve real property acquired under this subsection or Subsection (a); or

(3) acquire additional real property to avoid or minimize loss on real property acquired as permitted by Subsection (a).

(c) A state trust company shall dispose of any real property subject to Subsection (a) not later than:

(1) the fifth anniversary of the date the real property:

(A) was acquired, except as otherwise provided by rules adopted under this subtitle; or

(B) ceases to be used as a state trust company facility; or

(2) the second anniversary of the date the real property

ceases to be a state trust company facility as provided by Section 184.002(b).

(d) The banking commissioner on application may grant one or more extensions of time for disposing of real property under Subsection (c) if the banking commissioner determines that:

(1) the state trust company has made a good faith effort to dispose of the real property; or

(2) disposal of the real property would be detrimental to the state trust company.

(e) Subject to the exercise of prudent judgment, a state trust company may invest its secondary capital in real property. The factors to be considered by a state trust company in exercise of prudent judgment include the factors contained in Section 184.101(f).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

SUBCHAPTER B. INVESTMENTS

Sec. 184.101. SECURITIES. (a) A state trust company may invest its restricted capital in any type or character of equity or investment securities under the limitations provided by this section.

(b) Unless the banking commissioner in writing approves maintenance of a lesser amount, a state trust company must invest and maintain an amount equal to at least 50 percent of the state trust company's restricted capital under Section 182.008 in investment securities that are readily marketable and can be converted to cash within four business days.

(c) Subject to Subsection (d), the total investment of its restricted capital in equity and investment securities of any one issuer, obligor, or maker, and the total investment of its restricted capital in mutual funds, held by the state trust company for its own account, may not exceed an amount equal to 15 percent of the state trust company's restricted capital. The banking commissioner may authorize investments in excess of this limitation on written application if the banking commissioner determines that:

(1) the excess investment is not prohibited by other applicable law; and

(2) the safety and soundness of the requesting state trust company is not adversely affected.

(d) Notwithstanding Subsection (c), a state trust company may invest its restricted capital, without limit subject to the exercise of prudent judgment, in:

(1) bonds and other legally created general obligations of a state, an agency or political subdivision of a state, the United States, or an agency or instrumentality of the United States;

(2) obligations that this state, an agency or political subdivision of this state, the United States, or an agency or instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee;

(3) securities that are offered and sold under 15 U.S.C. Section 77d(5);

(4) mortgage related securities or small business related securities, as those terms are defined by 15 U.S.C. Section 78c(a);

(5) mortgages, obligations, or other securities that are or ever have been sold by the Federal Home Loan Mortgage Corporation under Section 305 or 306, Federal Home Loan Mortgage Corporation Act (12 U.S.C. Sections 1434 and 1455);

(6) obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association;

(7) obligations issued by the Federal Agricultural Mortgage Corporation, the Federal Farm Credit Banks Funding Corporation, or a Federal Home Loan Bank;

(8) obligations of the Federal Financing Bank or the Environmental Financing Authority;

(9) obligations or other instruments or securities of the Student Loan Marketing Association; or

(10) qualified Canadian government obligations, as defined by 12 U.S.C. Section 24.

(e) In the exercise of prudent judgment, a state trust company shall, at a minimum:

(1) exercise care and caution to make and implement investment and management decisions for the entire investment portfolio, taking into consideration the safety and soundness of the state trust company;

(2) pursue an overall investment strategy to enable management to make appropriate present and future decisions; and

(3) consider, to the extent relevant to the decision or action:

(A) the size, diversification, and liquidity of its corporate assets;

(B) the general economic conditions;

(C) the possible effect of inflation or deflation;

(D) the expected tax consequences of the investment decisions or strategies;

(E) the role that each investment or course of action plays within the investment portfolio; and

(F) the expected total return of the portfolio.

(f) A state trust company may invest its secondary capital in any type or character of equity or investment securities subject to the exercise of prudent judgment according to the standards provided by Subsection (e).

(g) The finance commission may adopt rules to administer and carry out this section, including rules to:

(1) establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of investment; or

(2) limit or expand investment authority for state trust companies for particular classes or categories of securities or other property.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 23, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 250 (S.B. 875), Sec. 10, eff. September 1, 2015.

Sec. 184.102. TRANSACTIONS IN STATE TRUST COMPANY SHARES OR PARTICIPATION SHARES. Except with the prior written approval of the banking commissioner:

(1) a state trust company may not acquire its own shares or participation shares unless the amount of its undivided profits is sufficient to fully absorb the acquisition of the shares or participation shares under regulatory accounting principles; and

(2) a state trust company may not acquire a lien on its own shares or participation shares unless the amount of indebtedness secured is less than the amount of the state trust company's

undivided profits.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 184.103. STATE TRUST COMPANY SUBSIDIARIES. (a) Except as otherwise provided by this subtitle or rules adopted under this subtitle, and subject to the exercise of prudent judgment, a state trust company may invest its secondary capital to acquire or establish one or more subsidiaries to conduct any activity that may lawfully be conducted through the form of organization chosen for the subsidiary. The factors to be considered by a state trust company in exercise of prudent judgment include the factors contained in Section 184.101(e).

(b) A state trust company that intends to acquire, establish, or perform new activities through a subsidiary shall submit a letter to the banking commissioner describing in detail the proposed activities of the subsidiary.

(c) The state trust company may acquire or establish a subsidiary or begin performing new activities in an existing subsidiary on the 31st day after the date the banking commissioner receives the state trust company's letter, unless the banking commissioner specifies an earlier or later date. The banking commissioner may extend the 30-day period on a determination that the state trust company's letter raises issues that require additional information or additional time for analysis. If the period is extended, the state trust company may acquire or establish the subsidiary, or perform new activities in an existing subsidiary, only on prior written approval of the banking commissioner.

(d) A subsidiary of a state trust company is subject to regulation by the banking commissioner to the extent provided by this subtitle or rules adopted under this section. In the absence of limiting rules, the banking commissioner may regulate a subsidiary as if it were a state trust company.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 24, eff. Sept. 1, 2001.

Sec. 184.104. OTHER INVESTMENT PROVISIONS. (a) Without the prior written approval of the banking commissioner, a state trust company may not make any investment of its secondary capital in any investment that incurs or may incur, under regulatory accounting principles, a liability or contingent liability for the state trust company.

(b) The banking commissioner may, on a case-by-case basis, require a state trust company to dispose of any investment of its secondary capital, if the banking commissioner finds that the divestiture of the asset is necessary to protect the safety and soundness of the state trust company. The banking commissioner in the exercise of discretion under this subsection shall consider safety and soundness factors, including those contained in Section 182.008(b). The proposed effective date of an order requiring a state trust company to dispose of an asset must be stated in the order and must be on or after the 21st day after the date the proposed order is mailed or delivered. Unless the state trust company requests a hearing before the banking commissioner in writing before the effective date of the proposed order, the order becomes effective and is final and nonappealable.

(c) Subject to Subsections (a) and (b), to Section 184.105, and to the exercise of prudent judgment, a state trust company may invest its secondary capital in any type or character of investment for the purpose of generating income or profit. The factors to be considered by a state trust company in exercise of prudent judgment include the factors contained in Section 184.101(e).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 25, eff. Sept. 1, 2001.

Sec. 184.105. ENGAGING IN COMMERCE PROHIBITED. (a) Except as otherwise provided by this subtitle or rules adopted under this subtitle, a state trust company may not invest its funds in trade or commerce by buying, selling, or otherwise dealing goods or by owning or operating a business not part of the state trust business, except as necessary to fulfill a fiduciary obligation to a client.

(b) Under this section, engaging in an approved financial activity or an activity incidental or complementary to a financial

activity, whether as principal or agent, is not considered to be engaging in commerce.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 26, eff. Sept. 1, 2001.

SUBCHAPTER C. LOANS

Sec. 184.201. LENDING LIMITS. (a) A state trust company's total outstanding loans and extensions of credit to a person other than an insider may not exceed an amount equal to 15 percent of the state trust company's restricted capital.

(b) The aggregate loans and extensions of credit outstanding at any time to insiders of the state trust company may not exceed an amount equal to 15 percent of the state trust company's restricted capital. All covered transactions between an insider and a state trust company must be engaged in only on terms and under circumstances, including credit standards, that are substantially the same as those for comparable transactions with a person other than an insider.

(c) The finance commission may adopt rules to administer this section, including rules to:

(1) establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of loans or extensions of credit; and

(2) establish collective lending and investment limits.

(d) The banking commissioner may determine whether a loan or extension of credit putatively made to a person will be attributed to another person for purposes of this section.

(e) A state trust company may not lend trust deposits, except that a trustee may make a loan to a beneficiary of the trust if the loan is expressly authorized or directed by the instrument or transaction establishing the trust.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 184.202. VIOLATION OF LENDING LIMIT. (a) An officer, director, manager, managing participant, or employee of a state trust

company who approves or participates in the approval of a loan with actual knowledge that the loan violates Section 184.201 is jointly and severally liable to the state trust company for the lesser of the amount by which the loan exceeded applicable lending limits or the state trust company's actual loss. The person remains liable for that amount until the loan and all prior indebtedness of the borrower to the state trust company have been fully repaid.

(b) The state trust company may initiate a proceeding to collect an amount due under this section at any time before the date the borrower defaults on the subject loan or any prior indebtedness or before the fourth anniversary of that date.

(c) A person who is liable for and pays amounts to the state trust company under this section is entitled to an assignment of the state trust company's claim against the borrower to the extent of the payments.

(d) For purposes of this section, an officer, director, manager, managing participant, or employee of a state trust company is presumed to know the amount of the state trust company's lending limit under Section 184.201 and the amount of the borrower's aggregate outstanding indebtedness to the state trust company immediately before a new loan or extension of credit to that borrower.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 184.203. LEASE FINANCING TRANSACTION. (a) Subject to rules adopted under this subtitle, a state trust company may become the owner and lessor of tangible personal property for lease financing transactions on a net lease basis on the specific request and for the use of a client. Without the written approval of the banking commissioner to continue holding property acquired for leasing purposes under this subsection, the state trust company may not hold the property more than six months after the date of expiration of the original or any extended or renewed lease period agreed to by the client for whom the property was acquired or by a subsequent lessee.

(b) A rental payment received by the state trust company in a lease financing transaction under this section is considered to be

rent and not interest or compensation for the use, forbearance, or detention of money. However, a lease financing transaction is considered to be a loan or extension of credit for purposes of Sections 184.201 and 184.202.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 184.204. GENERAL BANKING PRIVILEGES NOT CONFERRED. This subchapter does not confer general banking privileges on a state trust company.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

SUBCHAPTER D. TRUST DEPOSITS

Sec. 184.301. TRUST DEPOSITS. (a) A state trust company may deposit trust funds with itself as an investment if:

(1) the deposit is authorized by the settlor or beneficiary;

(2) the state trust company maintains as security for the deposit a separate fund of securities, legal for trust investments, under control of a federal reserve bank or a clearing corporation, as defined by Section 8.102, Business & Commerce Code, within or outside this state;

(3) the total market value of the security is at all times at least equal to the amount of the deposit; and

(4) the separate fund is designated as a separate fund.

(b) A state trust company may make periodic withdrawals from or additions to a securities fund required by Subsection (a) as long as the required value is maintained. Income from the securities in the fund belongs to the state trust company.

(c) Security for a deposit under this section is not required for a deposit under Subsection (a) to the extent the deposit is insured by the Federal Deposit Insurance Corporation or its successor.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 184.302. GENERAL BANKING PRIVILEGES NOT CONFERRED. This subchapter does not confer general banking privileges on a state trust company.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

SUBCHAPTER E. LIABILITIES AND PLEDGE OF ASSETS

Sec. 184.401. BORROWING LIMIT. Except with the prior written approval of the banking commissioner, a state trust company may not have outstanding liabilities, excluding trust deposit liabilities arising under Section 184.301, that exceed an amount equal to five times its restricted capital.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 184.402. PLEDGE OF ASSETS. (a) A state trust company may not pledge or create a lien on any of its assets except to secure:

(1) the repayment of money borrowed;

(2) trust deposits as specifically authorized or required by:

(A) Section 184.301;

(B) Title 9, Property Code; or

(C) rules adopted under this chapter; or

(3) deposits made by:

(A) the United States;

(B) a state, county, or municipality; or

(C) an agency of the United States or a state, county, or municipality.

(b) An act, deed, conveyance, pledge, or contract in violation of this section is void.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

CHAPTER 185. ENFORCEMENT ACTIONS
SUBCHAPTER A. ENFORCEMENT ORDERS

Sec. 185.0001. APPLICABILITY TO STATE TRUST COMPANY SUBSIDIARIES. This subchapter applies to a subsidiary of a state trust company, a present or former officer, director, manager, managing participant, 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 trust company, a present or former officer, director, manager, managing participant, or employee of a state trust company, or a controlling shareholder or other person participating in the affairs of a state trust company.

Added by Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. 3555), Sec. 9, eff. September 1, 2015.

Sec. 185.001. DETERMINATION LETTER. (a) If the banking commissioner determines from examination or other credible evidence that a state trust company is in a condition that may warrant the issuance of an enforcement order under this chapter, the banking commissioner may notify the state trust company in writing of the determination, the requirements the state trust company 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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.002. CEASE AND DESIST ORDER. (a) The banking commissioner has grounds to issue a cease and desist order to an officer, employee, director, manager, or managing participant of a state trust company, or the state trust company itself acting through an authorized person, if the banking commissioner determines from

examination or other credible evidence that the state trust company or person directly or indirectly has:

(1) violated this subtitle or another applicable law or rule;

(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 state trust company's charter or an agreement between the state trust company 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 or other conduct described by Subsection (a) appears to be necessary and in the best interest of a state trust company involved and its clients, creditors, and shareholders or participants, the banking commissioner may serve a proposed cease and desist order on the state trust company and each person who committed or participated in the violation. The 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 order; and

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

(b-1) A proposed cease and desist order may require an officer, employee, director, manager, or managing participant of a state trust company, or the state trust company 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 state trust company or person against whom the 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 state trust company or person.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1,

1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. 3555), Sec. 10, eff. September 1, 2015.

Sec. 185.003. REMOVAL OR PROHIBITION ORDER. (a) The banking commissioner has grounds to remove or prohibit a present or former officer, director, manager, managing participant, or employee of a state trust company from office or employment in, or prohibit a controlling shareholder or participant or other person participating in the affairs of a state trust company from further participation in the affairs of, the state trust company 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 185.002(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 clients, 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) that action by the person:

(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 an officer, employee, director, manager or managing participant, controlling shareholder or participant, or other person alleged to have committed or participated in the violation or other conduct described by Section 185.002(a). The 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 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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.017(a), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. 1165), Sec. 9, eff. May 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 15, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. 3555), Sec. 11, eff. September 1, 2015.

Sec. 185.0035. 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, manager, managing participant, or employee of a state trust company from office or employment in, or prohibit a controlling shareholder or participant or other person participating in the affairs of a state trust company from further participation in the affairs of, the state trust company 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 financial institution, as defined by Section 201.101;

(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 trust company 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 trust company or participation in the affairs of a state trust company does not, or is unlikely to, threaten the interests of the clients, depositors, creditors, or shareholders of the state trust company or the public confidence in the state trust company.

(f) Not later than the 30th day after the date a 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 181.202 and 181.204.

Added by Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. 3555), Sec. 12, eff. September 1, 2015.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 24, eff. September 1, 2019.

Sec. 185.004. 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 banking commissioner 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 banking commissioner has the burden of proof, and each person against whom the order is directed may cross-examine witnesses and present evidence to show why the order should not be issued.

(b) After the hearing, the banking commissioner shall issue or decline to issue the order. The 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 181.202 and 181.204.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 25, eff. September 1, 2019.

Sec. 185.005. EMERGENCY ORDER. (a) If the banking commissioner believes that immediate action is needed to prevent immediate and irreparable harm to the state trust company and its clients, creditors, and shareholders or participants, 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 state trust company and any person against whom the emergency order is directed of:

(1) the specific conduct requiring the order;

(2) the citation of each statute or rule 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 order is directed requests a hearing in writing before the 11th day after the date the order is served on the person, the 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 the hearing 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 order is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections 181.202 and 181.204.

(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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. 1165), Sec. 10, eff. May 28, 2011.
Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 26, eff. September 1, 2019.

Sec. 185.006. COPY OF LETTER OR ORDER IN STATE TRUST COMPANY RECORDS. A copy of any 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 state trust company, regardless of whether the state trust company is a party, and filed in the minutes of the board. Each director, manager, or managing participant 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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.007. EFFECT OF FINAL REMOVAL OR PROHIBITION ORDER. (a) Except as provided by other 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 trust company, state bank, 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 while the order is in effect;

(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 an entity identified in Subsection (a)(1) with respect to voting securities in the entity 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 the affected vote.

(d) Participants of a limited trust association in which a participant has been finally removed or prohibited from participation in the state trust company's affairs under this subchapter shall elect a board of managers.

(e) This section and Section 185.008 do not prohibit a removal or prohibition order that has indefinite duration or that by its terms is perpetual.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 6.018(a), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. 1165), Sec. 11, eff. May 28, 2011.

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 15, eff. September 1, 2017.

Sec. 185.0071. APPLICATION FOR RELEASE FROM FINAL REMOVAL OR PROHIBITION ORDER. (a) After the expiration of 10 years from the 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. 12, eff. May 28, 2011.

Sec. 185.008. 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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.009. ENFORCEMENT BY COMMISSIONER. (a) If the banking commissioner reasonably believes that a state trust company 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 state trust company or its clients, creditors, shareholders, or participants to harm;

(2) other applicable law of this state and, as a result of that violation, exposed or could have exposed the state trust company or its clients, creditors, shareholders, or participants to harm; or

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

(a-1) The banking commissioner may:

(1) initiate administrative penalty proceedings against the state trust company or other person, as applicable, in accordance with Sections 185.010 and 185.011;

(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 a state trust company or person committing the violation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. 1165), Sec. 13, eff. May 28, 2011.

Sec. 185.010. ADMINISTRATIVE PENALTY. (a) The banking commissioner may initiate a proceeding for an administrative penalty against a state trust company or other person by serving on the state trust company 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 185.009(a)(1) or (2), identify corrective action that the state trust company 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 state trust company or other person;

(2) the good faith of the state trust company 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 state trust company or other person, as applicable, in an amount:

(1) if imposed against a state trust company, 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 state trust company's assets; or

(2) if imposed against a person other than a state trust company, 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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. 1165), Sec. 14, eff. May 28, 2011.
Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. 1823), Sec. 10, eff. September 1, 2019.

Sec. 185.011. PAYMENT OR APPEAL OF ADMINISTRATIVE PENALTY. (a) When a penalty order under Section 185.010 becomes final, a state trust company 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 state trust company 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 state trust company 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 state trust company or other person, as applicable, if the attorney general prevails in judicial action necessary for collection of the penalty.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. 1165), Sec. 15, eff. May 28, 2011.

Sec. 185.012. 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 181, 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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. 1165), Sec. 16, eff. May 28, 2011.

Sec. 185.013. COLLECTION OF FEES. The banking commissioner may sue to enforce the collection of a fee owed to the department under a law administered by the banking commissioner. 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 banking commissioner with the law relating to the computation and levy of the fee.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

SUBCHAPTER B. SUPERVISION AND CONSERVATORSHIP

Sec. 185.1001. APPLICABILITY TO STATE TRUST COMPANY SUBSIDIARIES. This subchapter applies to a subsidiary of a state trust company, a present or former officer, director, manager, managing participant, 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 trust company, a present or former officer, director, manager, managing participant, or employee of a state trust company, or a controlling shareholder or other person participating in the affairs of a state trust company.

Added by Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. 3555), Sec. 13, eff. September 1, 2015.

Sec. 185.101. ORDER OF SUPERVISION. (a) The banking commissioner by order may appoint a supervisor over a state trust company if the banking commissioner determines from examination or other credible evidence that the state trust company is in hazardous condition and that an order of supervision appears to be necessary and in the best interest of the state trust company and its clients, creditors, and shareholders or participants, or the public.

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

(c) Subject to Subsection (d), the 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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 599 (S.B. 1401), Sec. 16, eff. September 1, 2017.

Sec. 185.102. ORDER OF CONSERVATORSHIP. (a) The banking commissioner by order may appoint a conservator for a state trust company if the banking commissioner determines from examination or other credible evidence that the state trust company is in hazardous condition and immediate and irreparable harm is threatened to the state trust company, its clients, creditors, or shareholders or participants, 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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.103. HEARING. (a) An order issued under Section 185.101 or 185.102 must contain or be accompanied by a notice that, at the request of the state trust company, a hearing will be held before the banking commissioner at which the state trust company may cross-examine witnesses and present evidence to contest the order or show that it has satisfied all requirements for abatement of the order. The banking commissioner 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 it has satisfied all requirements for abatement of the order, the state trust company shall 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 time and place 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 state trust company; 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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.104. POST-HEARING ORDER. (a) If after the hearing the banking commissioner finds that the state trust company has been rehabilitated, that its hazardous condition has been remedied, that irreparable harm is no longer threatened, or that the state trust company should otherwise be released from the order, the banking commissioner shall release the state trust company from the order, subject to conditions the banking commissioner from the evidence believes are warranted to preserve the safety and soundness of the state trust company.

(b) If after the hearing the banking commissioner finds that the state trust company 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 pursuant to Section 185.101;

(2) appoint or reappoint a conservator pursuant to Section 185.102; 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 181.202 and 181.204.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 27, eff. September 1, 2019.

Sec. 185.105. 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 181, except that the banking commissioner may release to the public an order or information relating to the existence of an order if the banking commissioner concludes that the release would enhance effective enforcement of the order.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.106. DUTIES OF STATE TRUST COMPANY UNDER SUPERVISION. During a period of supervision, a state trust company, 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 state trust company's assets;

(2) lend or invest the state trust company's funds;

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

(4) pay a cash dividend to the state trust company's shareholders or participants;

(5) solicit or accept any new client accounts; or

(6) 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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 16, eff. June 14, 2013.

Sec. 185.107. POWERS AND DUTIES OF CONSERVATOR. (a) A conservator appointed under this subchapter shall immediately take charge of the state trust company 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 contained in the order of appointment or other direction of the banking commissioner, the conservator has all the powers of the directors, managers, managing participants, officers, and shareholders or participants of a state trust company and shall conduct the business of the state trust company and take all steps the conservator considers appropriate to remove the causes and conditions requiring the conservatorship. During the conservatorship, the board may not direct or participate in the affairs of the state trust company.

(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 trust companies.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.108. 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, a supervisor or conservator.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.109. 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 as supervisor or conservator.

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

(c) Notwithstanding any other provision of this subchapter, the state trust company may employ an attorney and other persons the state trust company selects to assist the state trust company 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 state trust company for the attorney or 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 state trust company during a period of supervision or conservatorship if deferral appears to aid prospects for rehabilitation. As a condition of release from supervision or conservatorship, the banking commissioner may require the rehabilitated state trust company to pay or develop a reasonable plan for payment of deferred fees.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.110. REVIEW OF SUPERVISOR OR CONSERVATOR DECISIONS. (a) Notwithstanding Section 185.107(b), a majority of the state trust company'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 state trust company. 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 state trust company'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 state trust company 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 state trust company.

(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 181.202 and 181.204.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 28, eff. September 1, 2019.

Sec. 185.111. SUIT FILED AGAINST OR ON BEHALF OF STATE TRUST COMPANY UNDER SUPERVISION OR CONSERVATORSHIP. (a) A suit filed against a state trust company while the state trust company 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 state trust company, must be brought in Travis County regardless of whether the state trust company remains under an order of supervision or conservatorship.

(b) A conservator may sue a person on the trust company's behalf to preserve, protect, or recover state trust company assets, including claims or causes of action. The suit may be in:

(1) Travis County; or

(2) another location where jurisdiction and venue against that person may be obtained under law.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.112. 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 state trust company 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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.113. ADMINISTRATIVE ELECTION OF REMEDIES. The banking commissioner may take any action authorized under Chapter 186 regardless of the existence of supervision or conservatorship. A period of supervision or conservatorship is not required before a trust company is closed for liquidation or other remedial action is taken.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.114. RELEASE BEFORE HEARING. This subchapter does not prevent release of a state trust company from supervision or conservatorship before a hearing if the banking commissioner is satisfied that requirements for abatement have been adequately satisfied.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

SUBCHAPTER C. UNAUTHORIZED TRUST ACTIVITY: INVESTIGATION AND ENFORCEMENT

Sec. 185.201. INVESTIGATION OF UNAUTHORIZED TRUST 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 trust activity, the banking commissioner may:

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

(A) determine whether the unauthorized trust 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 any unauthorized trust 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 other 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 or 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 any other relevant tort based on the report or other information the person furnished as provided by this subchapter.

(d) This section does not:

(1) affect or modify 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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1,

1999.

Sec. 185.202. SUBPOENA AUTHORITY. (a) This section applies only to an investigation of an unauthorized trust activity as provided by Section 185.201, 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 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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.11, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 6.103(e), eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 652 (S.B. 1823), Sec. 11, eff. September 1, 2019.

Sec. 185.203. ENFORCEMENT OF SUBPOENA. (a) If necessary, the banking commissioner may apply to a district court in Travis County or in 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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.204. CONFIDENTIALITY OF SUBPOENAED RECORDS. (a) A book, account, record, paper, correspondence, or other document subpoenaed and produced under Section 185.202 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 181, and confidentiality provisions of other law administered by the banking commissioner, information or material acquired under Section 185.202 under a subpoena is not a public record for the period the banking commissioner considers reasonably necessary to complete the investigation, protect the person being investigated from unwarranted injury, or 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, 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 compliance with applicable confidentiality laws.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.205. EVIDENCE. (a) On certification by the banking commissioner, a book, record, paper, or document produced or

testimony taken as provided by Section 185.202 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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.206. CEASE AND DESIST ORDER REGARDING UNAUTHORIZED TRUST ACTIVITY. (a) The banking commissioner may serve a proposed cease and desist order on a person the banking commissioner believes is engaging or is likely to engage in an unauthorized trust 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 the acts or practices alleged to be an unauthorized activity; and

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

(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 banking commissioner unless the parties agree to a later hearing date. At the hearing, the banking commissioner 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 witnesses 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 trust activity.

(e) The banking commissioner may release a final cease and desist order issued under this section or information relating to the existence of the order to the public if the banking commissioner finds that the release would enhance the effective enforcement of the order or will serve the public interest.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.207. EMERGENCY CEASE AND DESIST ORDER. (a) The banking commissioner may issue an emergency cease and desist order to a person who the banking commissioner reasonably believes is engaging in a continuing unauthorized trust 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 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. 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 banking commissioner 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.

(g) The banking commissioner may release a final cease and desist order issued under this section or information regarding the existence of the order to the public if the banking commissioner finds that the release would enhance the effective enforcement of the order or will serve the public interest.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.208. APPEAL 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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.209. 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 administrative penalty proceedings under

Section 185.210;

(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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.210. ADMINISTRATIVE PENALTY. (a) The banking commissioner may initiate an action for an administrative penalty against a person for a 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 registered 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 be in violation of 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 separate act of unauthorized activity;

(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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.211. PAYMENT AND APPEAL OF ADMINISTRATIVE PENALTY. (a) When an administrative penalty order under Section 185.210 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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 185.212. 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 to the person. 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 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 the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount of the penalty.

(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.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

CHAPTER 186. DISSOLUTION AND RECEIVERSHIP

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 186.001. DEFINITION. In this chapter, "administrative expense" means:

(1) an expense designated as an administrative expense by Subchapter C or D;

(2) court costs and expenses of operation and liquidation of a state trust company estate;

(3) wages owed to an employee of a state trust company for services rendered within three months before the date the state trust company was closed for liquidation and not exceeding:

(A) $2,000 to each employee; or

(B) another amount set by rules adopted under this subtitle;

(4) current wages owed to a state trust company employee whose services are retained by the receiver for services rendered after the date the state trust company is closed for liquidation;

(5) an unpaid expense of supervision or conservatorship of the state trust company before its closing for liquidation; and

(6) any unpaid fees or assessments owed to the department.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.002. REMEDIES EXCLUSIVE. (a) Unless the banking commissioner so requests, a court may not:

(1) order the closing or suspension of operation of a state trust company; or

(2) appoint for a state trust company a receiver, supervisor, conservator, or liquidator, or other person with similar responsibility.

(b) A person may not be designated receiver, supervisor, conservator, or liquidator without the voluntary approval and concurrence of the banking commissioner.

(c) This chapter prevails over any other conflicting law of this state.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.003. FEDERAL DEPOSIT INSURANCE CORPORATION AS LIQUIDATOR. (a) The banking commissioner without court action may tender a state trust company that has been closed for liquidation to the Federal Deposit Insurance Corporation or its successor as receiver and liquidating agent if the trust deposits of the state trust company were insured by the Federal Deposit Insurance Corporation or its successor on the date of closing.

(b) After acceptance of tender of the state trust company, the Federal Deposit Insurance Corporation or its successor shall perform the acts and duties as receiver of the state trust company that it considers necessary or desirable and that are permitted or required by federal law or this chapter.

(c) If the Federal Deposit Insurance Corporation or its successor refuses to accept tender of the state trust company, the banking commissioner shall act as receiver.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.004. APPOINTMENT OF INDEPENDENT RECEIVER. (a) On request of the banking commissioner, the court in which a liquidation proceeding is pending may:

(1) appoint an independent receiver; and

(2) require a suitable bond of the independent receiver.

(b) On appointment of an independent receiver, the banking commissioner is discharged as receiver and remains a party to the liquidation proceeding with standing to initiate or contest any motion. The views of the banking commissioner are entitled to deference unless they are inconsistent with the plain meaning of this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.005. SUCCESSION OF TRUST POWERS. (a) If a state trust company in the process of voluntary or involuntary dissolution and liquidation is acting as trustee, guardian, executor, administrator, or escrow agent, or in another fiduciary or custodial capacity, the banking commissioner may authorize the sale of the state trust company's administration of fiduciary accounts to a successor entity with fiduciary powers.

(b) The successor entity, without the necessity of action by a court or the creator or a beneficiary of the fiduciary relationship, shall:

(1) continue the office, trust, or fiduciary relationship; and

(2) perform all the duties and exercise all the powers connected with or incidental to the fiduciary relationship as if the successor entity had been originally designated as the fiduciary.

(c) This section applies to all fiduciary relationships, including a trust established for the benefit of a minor by court order under Section 142.005, Property Code. This section does not affect any right of a court or a party to the instrument governing the fiduciary relationship to subsequently designate another trustee as the successor fiduciary.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

SUBCHAPTER B. VOLUNTARY DISSOLUTION

Sec. 186.101. INITIATING VOLUNTARY DISSOLUTION. (a) A state trust company may initiate voluntary dissolution and surrender its charter as provided by this subchapter:

(1) with the approval of the banking commissioner;

(2) after complying with the provisions of the Business Organizations Code regarding board and shareholder approval for voluntary dissolution; and

(3) by filing the notice of dissolution as provided by Section 186.102.

(b) The shareholders or participants of a state trust company initiating voluntary dissolution by resolution shall appoint one or

more persons to act as liquidating agent or committee. The liquidating agent or committee shall conduct the liquidation as provided by law and under the supervision of the board. The board, in consultation with the banking commissioner, shall require the liquidating agent or committee to give a suitable bond.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 76, eff. September 1, 2007.

Sec. 186.102. FILING RESOLUTIONS WITH BANKING COMMISSIONER. After resolutions to dissolve and liquidate a state trust company have been adopted by the board and shareholders or participants, a majority of the directors, managers, or managing participants shall verify and file with the banking commissioner certified copies of:

(1) the resolutions of the shareholders or participants that:

(A) are adopted at a meeting for which proper notice was given or by unanimous written consent; and

(B) approve the dissolution and liquidation of the state trust company;

(2) the resolutions of the board approving the dissolution and liquidation of the state trust company if the trust company is operated by a board of directors or managers;

(3) the notice to the shareholders or participants informing them of the meeting described by Subdivision (1)(A); and

(4) a plan of liquidation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 18, eff. September 1, 2007.

Sec. 186.103. BANKING COMMISSIONER INVESTIGATION AND CONSENT. The banking commissioner shall review the documentation submitted under Section 186.102 and conduct any necessary investigation or

examination. If the proceedings appear to have been properly conducted and the bond to be given by the liquidating agent or committee is adequate for its purposes, the banking commissioner shall consent to dissolution and direct the state trust company to publish notice of its pending dissolution.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.104. NOTICE OF PENDING DISSOLUTION. (a) A state trust company shall publish notice of its pending dissolution in a newspaper of general circulation in each community where its home office or an additional trust office is located:

(1) at least once each week for eight consecutive weeks; or

(2) at other times specified by the banking commissioner or rules adopted under this subtitle.

(b) The notice must:

(1) be in the form and include the information required by the banking commissioner; and

(2) state that:

(A) the state trust company is liquidating;

(B) clients, depositors, and creditors must present their claims for payment on or before a specific date; and

(C) all safe deposit box holders and bailors of property left with the state trust company should remove their property on or before a specified date.

(c) The dates selected by the state trust company under Subsection (b) must:

(1) be approved by the banking commissioner;

(2) allow the affairs of the state trust company to be wound up as quickly as feasible; and

(3) allow creditors, clients, and owners of property adequate time for presentation of claims, withdrawal of accounts, and redemption of property.

(d) The banking commissioner may adjust the dates under Subsection (b) with or without republication of notice if additional time appears needed for the activities to which the dates pertain.

(e) At the time of or promptly after publication of the notice,

the state trust company shall mail to each of the state trust company's known clients, depositors, creditors, safe deposit box holders, and bailors of property left with the state trust company, at the mailing address shown on the state trust company's records, an individual notice containing:

(1) the information required in a notice under Subsection (b); and

(2) specific information pertinent to the account or property of the addressee.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.019(a), eff. Sept. 1, 2001.

Sec. 186.105. SAFE DEPOSITS AND OTHER BAILMENTS. (a) A contract between the state trust company and a person for bailment, of deposit for hire, or for the lease of a safe, vault, or box, ceases on the date specified in the notice as the date for removal of property or a later date approved by the banking commissioner. A person who has paid rental or storage charges for a period extending beyond the date designated for removal of property has an unsecured claim against the state trust company for a refund of the unearned amount paid.

(b) If the property is not removed by the date the contract ceases, an officer of the state trust company shall inventory the property. In making the inventory, the officer may open a safe, vault, box, package, parcel, or receptacle in the custody or possession of the state trust company. The inventory must be made in the presence of a notary public who is not an officer or employee of the state trust company and who is bonded in an amount and by sureties approved by the banking commissioner. The property shall be marked to identify, to the extent possible, its owner or the person who left it with the state trust company.

(c) After all property belonging to others that is in the state trust company's custody and control has been inventoried, a master list certified by the state trust company officer and the notary public shall be furnished to the banking commissioner. The master list shall be kept in a place and dealt with in a manner the banking commissioner specifies pending delivery of the property to its owner

or to the comptroller as unclaimed property.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.106. OFFICES TO REMAIN OPEN. Unless the banking commissioner directs or consents otherwise, the home office and all additional trust offices of a state trust company initiating voluntary dissolution shall remain open for business during normal business hours until the last date specified in published notices for presentation of claims, withdrawal of accounts, and redemption of property.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.020(a), eff. Sept. 1, 2001.

Sec. 186.107. FIDUCIARY ACTIVITIES. (a) As soon as practicable after publication of the notice of dissolution, the state trust company shall:

(1) terminate all fiduciary positions it holds;

(2) surrender all property held by it as a fiduciary; and

(3) settle its fiduciary accounts.

(b) Unless all fiduciary accounts are settled and transferred by the last date specified in published notices or by the banking commissioner and unless the banking commissioner directs otherwise, the state trust company shall mail a notice to each trustor and beneficiary of any remaining trust, escrow arrangement, or other fiduciary relationship. The notice must state:

(1) the location of an office open during normal business hours where administration of the remaining fiduciary accounts will continue until settled or transferred; and

(2) a telephone number at that office.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.108. FINAL LIQUIDATION. (a) After the state trust

company has taken all of the actions specified by Sections 186.102, 186.104, 186.105, and 186.107, paid all its debts and obligations, and transferred all property for which a legal claimant has been found after the time for presentation of claims has expired, the state trust company shall make a list from its books of the names of each depositor, creditor, owner of personal property in the state trust company's possession or custody, or lessee of any safe, vault, or box, who has not claimed or has not received a deposit, debt, dividend, interest, balance, or other amount or property due to the person. The list must be sworn to or affirmed by a majority of the board or managing participants of the state trust company.

(b) The state trust company shall:

(1) file the list and any necessary identifying information with the banking commissioner;

(2) pay any unclaimed money and deliver any unclaimed property to the comptroller as provided by Chapter 74, Property Code; and

(3) certify to the banking commissioner that the unclaimed money has been paid and unclaimed property has been delivered to the comptroller.

(c) After the banking commissioner has reviewed the list and has reconciled the unclaimed cash and property with the amounts of money and property reported and transferred to the comptroller, the banking commissioner shall allow the state trust company to distribute the state trust company's remaining assets, if any, among its shareholders, participants, or participant-transferees as their ownership interests appear.

(d) After distribution of all remaining assets under Subsection (c), the state trust company shall file with the department:

(1) an affidavit and schedules sworn to or affirmed by a majority of the board or managing participants, showing the distribution to each shareholder, participant, or participant-transferee;

(2) all copies of reports of examination of the state trust company in its possession;

(3) its original charter or an affidavit stating that the original charter is lost; and

(4) any certificates of authority for additional trust offices.

(e) After verifying the submitted information and documents,

the banking commissioner shall issue a certificate canceling the charter of the state trust company.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.021(a), eff. Sept. 1, 2001.

Sec. 186.109. APPLICATION OF LAW TO STATE TRUST COMPANY IN DISSOLUTION. A state trust company in the process of voluntary dissolution and liquidation remains subject to this subtitle, including provisions for examination by the banking commissioner, and the state trust company shall furnish reports required by the banking commissioner.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.110. AUTHORIZATION OF DEVIATION FROM PROCEDURES. The banking commissioner may authorize a deviation from the procedures for voluntary dissolution provided by this subchapter if the banking commissioner determines that the interests of claimants are not jeopardized by the deviation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.111. CLOSURE BY BANKING COMMISSIONER FOR INVOLUNTARY DISSOLUTION AND LIQUIDATION. The banking commissioner may close the state trust company for involuntary dissolution and liquidation under this chapter if the banking commissioner determines that:

(1) the voluntary liquidation is:

(A) being conducted in an improper or illegal manner; or

(B) not in the best interests of the state trust company's clients and creditors; or

(2) the state trust company is insolvent or imminently insolvent.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.112. APPLICATION FOR NEW CHARTER. After a state trust company's charter has been voluntarily surrendered and canceled, the state trust company may not resume business or reopen except on application for and approval of a new charter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

SUBCHAPTER C. INVOLUNTARY DISSOLUTION AND LIQUIDATION

Sec. 186.201. ACTION TO CLOSE STATE TRUST COMPANY. (a) The banking commissioner may by written order close and liquidate a state trust company on finding that:

(1) the interests of its clients and creditors are jeopardized by the state trust company's insolvency or imminent insolvency; and

(2) the best interests of clients and creditors would be served by requiring that the state trust company be closed and its assets liquidated.

(b) A majority of the state trust company's directors, managers, or managing participants may voluntarily close the state trust company and place it with the banking commissioner for liquidation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.12, eff. Sept. 1, 2001.

Sec. 186.202. NOTICE AND EFFECT OF CLOSURE; APPOINTMENT OF RECEIVER. (a) After closing a state trust company under Section 186.201, the banking commissioner shall attach to or otherwise display at its main entrance a copy of the written closing order issued under Section 186.201(a) and containing the findings on which the closing of the state trust company is based. A correspondent bank of the closed state trust company may not pay an item drawn on the account of the closed state trust company that is presented for

payment after the correspondent has received actual notice of closing unless it previously certified the item for payment.

(b) As soon as practicable after posting the closing order at the state trust company's main entrance, the banking commissioner shall tender the state trust company to the Federal Deposit Insurance Corporation as provided by Section 186.003 or initiate a receivership proceeding by filing a certified copy of the closing order in district court in Travis County, subject to Subsection (c). The court in which the closing order is filed shall docket it as a case styled, "In re liquidation of ____" (inserting the name of the state trust company). When the closing order is filed, the court has constructive custody of all the state trust company's assets and any action that seeks to directly or indirectly affect state trust company assets is considered an intervention in the receivership proceeding and subject to this subchapter and Subchapter D.

(c) Venue for an action instituted to effect, contest, or intervene in the liquidation of a state trust company is in Travis County, except that on motion filed and served concurrently with or before the filing of the answer, the court may, on a finding of good cause, transfer the action to the county of the state trust company's home office.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.13, eff. Sept. 1, 2001.

Sec. 186.203. NATURE AND DURATION OF RECEIVERSHIP. (a) The court may not require a bond from the banking commissioner as receiver.

(b) A reference in this chapter to the receiver is a reference to the banking commissioner as receiver and to any successors in office, the Federal Deposit Insurance Corporation if acting as receiver as provided by Section 186.003 and federal law, or an independent receiver appointed at the request of the banking commissioner as provided by Section 186.004.

(c) The receiver has all the powers of the directors, managers, managing participants, officers, and shareholders or participants of the state trust company as necessary to support an action taken on behalf of the state trust company.

(d) The receiver and all employees and agents acting on behalf of the receiver are acting in an official capacity and are protected by Section 12.106. An act of the receiver is an act of the state trust company in liquidation. This state or a political subdivision of this state is not liable and may not be held accountable for any debt or obligation of a state trust company in receivership.

(e) Section 64.072, Civil Practice and Remedies Code, applies to the receivership of a state trust company except as provided by this subsection. A state trust company receivership shall be administered continuously for the length of time necessary to complete its purposes, and a period prescribed by other law limiting the time for the administration of a receivership or of corporate affairs generally, including Section 64.072(d), Civil Practice and Remedies Code, does not apply.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.204. CONTEST OF LIQUIDATION. (a) A state trust company, acting through a majority of its directors, managers, or managing participants, may intervene in an action filed by the banking commissioner closing a state trust company to challenge the banking commissioner's closing of the state trust company and to enjoin the banking commissioner or other receiver from liquidating its assets. The state trust company must file the intervention not later than the second business day after the closing of the state trust company, excluding legal holidays. The court may issue an ex parte order restraining the receiver from liquidating state trust company assets pending a hearing on the injunction. The receiver shall comply with the restraining order but may petition the court for permission to liquidate an asset as necessary to prevent its loss or diminution pending the outcome of the injunction action.

(b) The court shall hear an action under Subsection (a) as quickly as possible and shall give it priority over other business.

(c) The state trust company or receiver may appeal the court's judgment as in other civil cases, except that the receiver shall retain all state trust company assets pending a final appellate court order even if the banking commissioner does not prevail in the trial court. If the banking commissioner prevails in the trial court,

liquidation of the state trust company may proceed unless the trial court or appellate court orders otherwise. If liquidation is enjoined or stayed pending appeal, the trial court retains jurisdiction to permit liquidation of an asset as necessary to prevent its loss or diminution pending the outcome of the appeal.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.205. NOTICE OF STATE TRUST COMPANY CLOSING. (a) As soon as reasonably practicable after initiation of the receivership proceeding, the receiver shall publish notice, in a newspaper of general circulation in each community where the state trust company's home office or any additional trust office is located. The notice must state that:

(1) the state trust company has been closed for liquidation;

(2) clients and creditors must present their claims for payment on or before a specific date; and

(3) all safe deposit box holders and bailors of property left with the state trust company should remove their property not later than a specified date.

(b) A date that the receiver selects under Subsection (a):

(1) may not be earlier than the 121st day after the date of the notice; and

(2) must allow:

(A) the affairs of the state trust company to be wound up as quickly as feasible; and

(B) creditors, clients, and owners of property adequate time for presentation of claims, withdrawal of accounts, and redemption of property.

(c) The receiver may adjust the dates under Subsection (a) with the approval of the court and with or without republication of notice if additional time appears needed for those activities.

(d) As soon as reasonably practicable given the state of state trust company records and the adequacy of staffing, the receiver shall mail to each of the state trust company's known clients, creditors, safe deposit box holders, and bailors of property left with the state trust company, at the mailing address shown on the

state trust company's records, an individual notice containing the information required in a notice under Subsection (a) and specific information pertinent to the account or property of the addressee.

(e) The receiver may determine the form and content of notices under this section.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.022(a), eff. Sept. 1, 2001.

Sec. 186.206. INVENTORY. As soon as reasonably practicable given the state of state trust company records and the adequacy of staffing, the receiver shall prepare a comprehensive inventory of the state trust company's assets for filing with the court. The inventory is open to inspection.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.207. RECEIVER'S TITLE AND PRIORITY. (a) The receiver has the title to all the state trust company's property, contracts, and rights of action, wherever located, beginning on the date the state trust company is closed for liquidation.

(b) The rights of the receiver have priority over a contractual lien or statutory landlord's lien under Chapter 54, Property Code, judgment lien, attachment lien, or voluntary lien that arises after the date of the closing of the state trust company for liquidation.

(c) The filing or recording of a receivership order in a record office of this state gives the same notice that would be given by a deed, bill of sale, or other evidence of title filed or recorded by the state trust company in liquidation. The recording clerk shall index a recorded receivership order in the records to which the order relates.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.208. RIGHTS FIXED. The rights and liabilities of the

state trust company in liquidation and of a client, creditor, officer, director, manager, managing participant, employee, shareholder, participant, participant-transferee, agent, or other person interested in the state trust company's estate are fixed on the date of closing of the state trust company for liquidation except as otherwise directed by the court or as expressly provided otherwise by this subchapter or Subchapter D.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.209. DEPOSITORIES. (a) The receiver may deposit money collected on behalf of the state trust company estate in:

(1) the Texas Treasury Safekeeping Trust Company in accordance with procedures established by the comptroller; or

(2) one or more depository institutions in this state, the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor, if the receiver, using sound financial judgment, determines that it would be advantageous to do so.

(b) If receivership money deposited in an account at a state bank exceeds the maximum insured amount, the receiver shall require the excess deposit to be adequately secured through pledge of securities or otherwise, without approval of the court. The depository bank may secure the deposits of the state trust company in liquidation on behalf of the receiver, notwithstanding any other provision of this subtitle.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.210. PENDING LAWSUIT. (a) A judgment or order of a court of this state or of another jurisdiction in an action pending by or against the state trust company, rendered after the date the state trust company was closed for liquidation, is not binding on the receiver unless the receiver was made a party to the suit.

(b) Before the first anniversary of the date the state trust company was closed for liquidation, the receiver may not be required to plead to any suit pending against the state trust company in a court in this state on the date the state trust company was closed

for liquidation and in which the receiver is a proper plaintiff or defendant.

(c) Sections 64.052, 64.053, and 64.056, Civil Practice and Remedies Code, do not apply to a state trust company estate being administered under this subchapter and Subchapter D.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.211. NEW LAWSUIT. (a) Except as otherwise provided by this section, the court in which a receivership proceeding is pending under this subchapter has exclusive jurisdiction to hear and determine all actions or proceedings instituted by or against the state trust company or receiver after the receivership proceeding begins.

(b) The receiver may file in any jurisdiction an ancillary suit that may be helpful to obtain jurisdiction or venue over a person or property.

(c) Exclusive venue lies in Travis County for an action or proceeding instituted against the receiver or the receiver's employee, including an employee of the department, that asserts personal liability on the part of the receiver or employee.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.212. OBTAINING RECORD OR OTHER PROPERTY IN POSSESSION OF OTHER PERSON. (a) Each state trust company affiliate, officer, director, manager, managing participant, employee, shareholder, participant, participant-transferee, trustee, agent, servant, employee, attorney, attorney-in-fact, or correspondent shall immediately deliver to the receiver, without cost to the receiver, any record or other property of the state trust company or that relates to the business of the state trust company.

(b) If by contract or otherwise a record or other property that can be copied is the property of a person listed in Subsection (a), it shall be copied and the copy shall be delivered to the receiver. The owner shall retain the original until notification by the receiver that it is no longer required in the administration of the

state trust company's estate or until another time the court, after notice and hearing, directs. The copy is considered to be a record of the state trust company in liquidation under Section 186.225.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.213. INJUNCTION IN AID OF LIQUIDATION. (a) On application by the receiver, the court with or without notice may issue an injunction:

(1) restraining each state trust company officer, director, manager, managing participant, employee, shareholder, participant, participant-transferee, trustee, agent, servant, employee, attorney, attorney-in-fact, accountant or accounting firm, correspondent, or other person from transacting the state trust company's business or wasting or disposing of its property; or

(2) requiring the delivery of the state trust company's property or assets to the receiver subject to the further order of the court.

(b) At any time during a proceeding under this subchapter, the court may issue another injunction or order considered necessary or desirable to prevent:

(1) interference with the receiver or the proceeding;

(2) waste of the assets of the state trust company;

(3) the beginning or prosecution of an action;

(4) the obtaining of a preference, judgment, attachment, garnishment, or other lien; or

(5) the making of a levy against the state trust company or against its assets.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.214. SUBPOENA. (a) The receiver may request the court ex parte to issue a subpoena to compel the attendance and testimony of a witness before the receiver and the production of a record relating to the receivership estate. For that purpose the receiver or the receiver's designated representative may administer an oath or affirmation, examine a witness, or receive evidence. The

court has statewide subpoena power and may compel attendance and production of a record before the receiver at the state trust company, the office of the receiver, or another location.

(b) A person served with a subpoena under this section may file a motion with the court for a protective order as provided by Rule 166b, Texas Rules of Civil Procedure. In a case of disobedience of a subpoena or the contumacy of a witness appearing before the receiver or the receiver's designated representative, the receiver may request and the court may issue an order requiring the person subpoenaed to obey the subpoena, give evidence, or produce a record relating to the matter in question.

(c) A witness who is required to appear before the receiver is entitled to receive:

(1) reimbursement for mileage, in the amount 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 set by the receiver with the approval of the court of not less than $10 a day and not more than an amount equal to the per diem travel allowance of a state employee.

(d) A payment of fees under Subsection (c) is an administrative expense.

(e) The receiver may serve the subpoena or have it served by the receiver's authorized agent, a sheriff, or a constable. The sheriff's or constable's fee for serving a subpoena must be the same as the fee paid the sheriff or constable for similar services.

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

(g) On certification by the receiver under official seal, a record produced or testimony taken as provided by this section and held by the receiver is admissible in evidence in any case without proof of its correctness or other proof, except the certificate of the receiver that the record or testimony was received from the person producing the record or testifying. The certified record or a certified copy of the record is prima facie evidence of the facts it contains. This section does not limit another provision of this subchapter, Subchapter D, or another law that provides for the admission of evidence or its evidentiary value.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.103(f), eff. Sept. 1, 2001.

Sec. 186.215. EXECUTORY CONTRACT; ORAL AGREEMENT. (a) Not later than six months after the date the receivership proceeding begins, the receiver may terminate any executory contract to which the state trust company is a party or any obligation of the state trust company as a lessee. A lessor who receives notice of the receiver's election to terminate the lease before the 60th day before the termination date is not entitled to rent or damages for termination, other than rent accrued to the date of termination.

(b) An agreement that tends to diminish or defeat the interest of the estate in a state trust company asset is not valid against the receiver unless the agreement:

(1) is in writing;

(2) was executed by the state trust company and any person claiming an adverse interest under the agreement, including the obligor, when the state trust company acquired the asset;

(3) was approved by the board of the state trust company or its designated committee, and the approval is reflected in the minutes of the board or committee; and

(4) has been continuously since its execution an official record of the state trust company.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.216. PREFERENCES. (a) A transfer of or lien on the property or assets of a state trust company is voidable by the receiver if the transfer or lien:

(1) was made or created after:

(A) four months before the date the state trust company is closed for liquidation; or

(B) one year before the date the state trust company is closed for liquidation if the receiving creditor was at the time an affiliate, officer, director, manager, managing participant, principal shareholder, or participant of the state trust company or

an affiliate of the trust company;

(2) was made or created with the intent of giving to a creditor or depositor, or enabling a creditor or depositor to obtain, a greater percentage of the claimant's debt than is given or obtained by another claimant of the same class; and

(3) is accepted by a creditor or depositor having reasonable cause to believe that a preference will occur.

(b) Each state trust company officer, director, manager, managing participant, employee, shareholder, participant, participant-transferee, trustee, agent, servant, employee, attorney-in-fact, or correspondent, or other person acting on behalf of the state trust company, who has participated in implementing a voidable transfer or lien, and each person receiving property or the benefit of property of the state trust company as a result of the voidable transfer or lien, is personally liable for the property or benefit received and shall account to the receiver for the benefit of the clients and creditors of the state trust company.

(c) The receiver may avoid a transfer of or lien on the property or assets of a state trust company that a client, creditor, shareholder, participant, or participant-transferee of the state trust company could have avoided and may recover the property transferred or its value from the person to whom it was transferred or from a person who has received it unless the transferee or recipient was a bona fide holder for value before the date the state trust company was closed for liquidation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.217. EMPLOYEES OF RECEIVER. The receiver may employ agents, legal counsel, accountants, appraisers, consultants, and other personnel the receiver considers necessary to assist in the performance of the receiver's duties. The receiver may use personnel of the department if the receiver considers the use to be advantageous or desirable. The expense of employing those persons is an administrative expense.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.218. DISPOSAL OF PROPERTY; SETTLING OF CLAIM. (a) In liquidating a state trust company, the receiver on order of the court entered with or without hearing may:

(1) sell all or part of the property of the state trust company;

(2) borrow money and pledge all or part of the assets of the state trust company to secure the debt created, except that the receiver may not be held personally liable to repay borrowed funds;

(3) compromise or compound a doubtful or uncollectible debt or claim owed by or owing to the state trust company; and

(4) enter another agreement on behalf of the state trust company that the receiver considers necessary or proper to the management, conservation, or liquidation of its assets.

(b) If the amount of a debt or claim owed by or owing to the state trust company or the value of an item of property of the trust company does not exceed $20,000, excluding interest, the receiver may compromise or compound the debt or claim or sell the property on terms the receiver considers to be in the best interest of the state trust company estate without obtaining the approval of the court.

(c) With the approval of the court, the receiver may sell or offer or agree to sell an asset of the state trust company, other than a fiduciary asset, to a depositor or creditor of the state trust company. Payment may be in whole or in part out of distributions payable to the purchasing creditor or depositor on account of an approved claim against the state trust company's estate. On application by the receiver, the court may designate one or more representatives to act for certain clients or creditors as a class in the purchase, holding, and management of assets purchased by the class under this section, and the receiver may with the approval of the court advance the expenses of the appointed representative against the security of the claims of the class.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.219. COURT ORDER; NOTICE AND HEARING. If the court requires notice and hearing before entering an order, the court shall set the time and place of the hearing and prescribe whether the notice is to be given by service on specific parties, by publication,

or by a combination of those methods. The court may not enter an order requested by a person other than the receiver without notice to the receiver and an opportunity for the receiver to be heard.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.220. RECEIVER'S REPORTS; EXPENSES. (a) The receiver shall file with the court:

(1) a quarterly report showing the operation, receipts, expenditures, and general condition of the state trust company in liquidation; and

(2) a final report regarding the liquidated state trust company showing all receipts and expenditures and giving a full explanation and a statement of the disposition of all assets of the state trust company.

(b) The receiver shall pay all administrative expenses out of money or other assets of the state trust company. Each quarter the receiver shall swear to and submit to the court an itemized report of those expenses. The court shall approve the report unless an objection is filed before the 11th day after the date it is submitted. An objection may be made only by a party in interest and must specify each item objected to and the ground for the objection. The court shall set the objection for hearing and notify the parties of this action. The objecting party has the burden of proof to show that the item objected to is improper, unnecessary, or excessive.

(c) The court may prescribe whether the notice of the receiver's report is to be given by service on specific parties, by publication, or by a combination of those methods.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.221. COURT-ORDERED AUDIT. (a) The court may order an audit of the books and records of the receiver that relate to the receivership. A report of an audit ordered under this section shall be filed with the court. The receiver shall make the books and records relating to the receivership available to the auditor as required by the court order.

(b) The receiver shall pay the expenses of an audit ordered under this section as an administrative expense.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.222. SAFE DEPOSITS AND OTHER BAILMENTS. (a) A contract between the state trust company and another person for bailment, of deposit for hire, or for the lease of a safe, vault, or box ceases on the date specified for removal of property in the notices that were published and mailed or a later date approved by the receiver or the court. A person who has paid rental or storage charges for a period extending beyond the date designated for removal of property has a claim against the state trust company estate for a refund of the unearned amount paid.

(b) If the property is not removed by the date the contract ceases, the receiver shall inventory the property. In making the inventory, the receiver may open a safe, vault, or box, or any package, parcel, or receptacle, in the custody or possession of the receiver. The property shall be marked to identify, to the extent possible, its owner or the person who left it with the state trust company. After all property belonging to others that is in the receiver's custody and control has been inventoried, the receiver shall compile a master list that is divided for each office of the state trust company that received property that remains unclaimed. The receiver shall publish, in a newspaper of general circulation in each community in which the state trust company had an office that received property that remains unclaimed, the list and the names of the owners of the property as shown in the state trust company's records. The published notice shall specify a procedure for claiming the property unless the court, on application of the receiver, approves an alternate procedure.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.223. FIDUCIARY ACTIVITIES. (a) As soon after beginning the receivership proceeding as is practicable, the receiver shall:

(1) terminate all fiduciary positions the state trust company holds;

(2) surrender all property held by the state trust company as a fiduciary; and

(3) settle the state trust company's fiduciary accounts.

(b) The receiver shall release all segregated and identifiable fiduciary property held by the state trust company to successor fiduciaries.

(c) With the approval of the court, the receiver may sell the administration of all or substantially all remaining fiduciary accounts to one or more successor fiduciaries on terms that appear to be in the best interest of the state trust company's estate and the persons interested in the fiduciary accounts.

(d) If commingled fiduciary money held by the state trust company as trustee is insufficient to satisfy all fiduciary claims to the commingled money, the receiver shall distribute commingled money pro rata to all fiduciary claimants of commingled money based on their proportionate interests after payment of administrative expenses related solely to the fiduciary claims. The fictional tracing rule does not apply.

(e) The receiver may require a fiduciary claimant to file a proof of claim if the records of the state trust company are insufficient to identify the claimant's interest.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.224. DISPOSITION AND MAINTENANCE OF RECORDS. (a) On approval by the court, the receiver may dispose of records of the state trust company in liquidation that are obsolete and unnecessary to the continued administration of the receivership proceeding.

(b) The receiver may devise a method for the effective, efficient, and economical maintenance of the records of the state trust company and of the receiver's office. The methods may include maintaining those records on any medium approved by the records management division of the Texas State Library.

(c) To maintain the records of the liquidated state trust company after the closing of the receivership proceeding, the receiver may reserve assets of an estate, deposit them in an account,

and use them for maintenance, storage, and disposal of records in closed receivership estates.

(d) Records of a liquidated state trust company are not government records for any purpose, including Chapter 552, Government Code, but shall be preserved and disposed of as if they were records of the department under Chapter 441, Government Code. Those records are confidential as provided by:

(1) Section 59.006;

(2) Subchapter D, Chapter 181; and

(3) rules adopted under this subtitle.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.103(g), eff. Sept. 1, 2001.

Sec. 186.225. RECORDS ADMITTED. (a) A record of a state trust company in liquidation obtained by the receiver and held in the course of the receivership proceeding or a certified copy of the record under the official seal of the receiver is admissible in evidence in all cases without proof of correctness or other proof, except the certificate of the receiver that the record was received from the custody of the state trust company or found among its effects.

(b) The receiver may certify the correctness of a record of the receiver's office, including a record described by Subsection (a), and may certify any fact contained in the record. The record is admissible in evidence in all cases in which the original would be evidence.

(c) The original record or a certified copy of the record is prima facie evidence of the facts it contains.

(d) A copy of an original record or another record that is maintained on a medium approved by the records management division of the Texas State Library, within the scope of this section, and produced by the receiver or the receiver's authorized representative under this section:

(1) has the same effect as the original record; and

(2) may be used the same as the original record in a judicial or administrative proceeding in this state.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1,

1999.

Sec. 186.226. RESUMPTION OF BUSINESS. (a) A state trust company closed under Section 186.201 may not be reopened without the approval of the banking commissioner unless a contest of liquidation under Section 186.204 is finally resolved adversely to the banking commissioner and the court authorizes its reopening.

(b) The banking commissioner may place temporary limits on the right of withdrawals by, or payments to, individual clients and creditors of a state trust company reopened under this section, in accordance with applicable law.

(c) As a depositor or creditor of a reopened state trust company, this state or a political subdivision of this state may agree to temporary limits that the banking commissioner places on payments or withdrawals.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.227. ASSETS DISCOVERED AFTER CLOSE OF RECEIVERSHIP. (a) The banking commissioner shall report to the court discovery of an asset having value that:

(1) the banking commissioner discovers after the receivership was closed by final order of the court; and

(2) was abandoned as worthless or unknown during receivership.

(b) The court may reopen the receivership proceeding for continued liquidation if the value of the after-discovered assets justifies the reopening.

(c) If the banking commissioner suspects that the information concerning after-disclosed assets may have been intentionally or fraudulently concealed, the banking commissioner shall notify appropriate civil and criminal authorities to determine any applicable penalties.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

SUBCHAPTER D. CLAIMS AGAINST RECEIVERSHIP ESTATE

Sec. 186.301. FILING CLAIM. (a) This section applies only to a claim by a person, other than a shareholder, participant, or participant-transferee acting in that capacity, who has a claim against a state trust company in liquidation, including a claimant with a secured claim or a claimant under a fiduciary relationship that has been ordered by the receiver to file a claim pursuant to Section 186.223.

(b) To receive payment of a claim, the person must present proof of the claim to the receiver:

(1) at a place specified by the receiver; and

(2) within the period specified by the receiver under Section 186.205.

(c) Receipt of the required proof of claim by the receiver is a condition precedent to the payment of the claim.

(d) A claim that is not filed within the period specified by the receiver may not participate in a distribution of the assets by the receiver, except that, subject to court approval, the receiver may accept a claim filed not later than the 180th day after the date notice of the claimant's right to file a proof of claim is mailed to the claimant.

(e) A claim accepted under this section and approved is subordinate to an approved claim of a general creditor.

(f) Interest does not accrue on a claim after the date the state trust company is closed for liquidation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.302. PROOF OF CLAIM. (a) A proof of claim must be in writing, be signed by the claimant, and include:

(1) a statement of the claim;

(2) a description of the consideration for the claim;

(3) a statement of whether collateral is held or a security interest is asserted against the claim and, if so, a description of the collateral or security interest;

(4) a statement of any right of priority of payment for the claim or other specific right asserted by the claimant;

(5) a statement of whether a payment has been made on the

claim and, if so, the amount and source of the payment, to the extent known by the claimant;

(6) a statement that the amount claimed is justly owed by the state trust company in liquidation to the claimant; and

(7) any other matter that is required by the court.

(b) The receiver may designate the form of the proof of claim. A proof of claim must be filed under oath unless the oath is waived by the receiver. A proof of claim filed with the receiver is considered filed in an official proceeding for purposes of Chapter 37, Penal Code.

(c) If a claim is founded on a written instrument, the original instrument, unless lost or destroyed, must be filed with the proof of claim. After the instrument is filed, the receiver may permit the claimant to substitute a copy of the instrument until the final disposition of the claim. If the instrument is lost or destroyed, a statement of that fact and of the circumstances of the loss or destruction must be filed under oath with the claim.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.303. JUDGMENT AS PROOF OF CLAIM. (a) A judgment entered against a state trust company in liquidation before the date the state trust company was closed for liquidation may not be given higher priority than a claim of an unsecured creditor unless the judgment creditor in a proof of claim proves the allegations supporting the judgment to the receiver's satisfaction.

(b) A judgment against the state trust company taken by default or by collusion before the date the state trust company was closed for liquidation may not be considered as conclusive evidence of the liability of the state trust company to the judgment creditor or of the amount of damages to which the judgment creditor is entitled.

(c) A judgment against the state trust company entered after the date the state trust company was closed for liquidation may not be considered as evidence of liability or of the amount of damages.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.304. SECURED CLAIM. (a) The owner of a secured deposit may file a claim as a creditor against a state trust company in liquidation. The value of security shall be determined under supervision of the court by converting the security into money.

(b) The owner of a secured claim against a state trust company in liquidation may:

(1) surrender the security and file a claim as a general creditor; or

(2) apply the security to the claim and discharge the claim.

(c) If the owner applies the security and discharges the claim under Subsection (b), any deficiency shall be treated as a claim against the general assets of the state trust company on the same basis as a claim of an unsecured creditor. The amount of the deficiency shall be determined as provided by Section 186.305, except that if the amount of the deficiency has been adjudicated by a court in a proceeding in which the receiver has had notice and an opportunity to be heard, the court's decision is conclusive as to the amount.

(d) The value of security held by a secured creditor shall be determined under supervision of the court by:

(1) converting the security into money according to the terms of the agreement under which the security was delivered to the creditor; or

(2) agreement, arbitration, compromise, or litigation between the creditor and the receiver.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.305. UNLIQUIDATED OR UNDETERMINED CLAIM. (a) A claim based on an unliquidated or undetermined demand shall be filed within the period provided by Subchapter C for the filing of a claim. The claim may not share in any distribution to claimants until the claim is definitely liquidated, determined, and allowed. After the claim is liquidated, determined, and allowed, the claim shares ratably with the claims of the same class in all subsequent distributions.

(b) For the purposes of this section, a demand is considered unliquidated or undetermined if the right of action on the demand

accrued while a state trust company was closed for liquidation and the liability on the demand has not been determined or the amount of the demand has not been liquidated.

(c) If the receiver in all other respects is in a position to close the receivership proceeding, the proposed closing is sufficient grounds for the rejection of any remaining claim based on an unliquidated or undetermined demand. The receiver shall notify the claimant of the intention to close the proceeding. If the demand is not liquidated or determined before the 61st day after the date of the notice, the receiver may reject the claim.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.306. SET-OFF. (a) Mutual credits and mutual debts shall be set off and only the balance allowed or paid, except that a set-off may not be allowed in favor of a person if:

(1) the obligation of a state trust company to the person on the date the state trust company was closed for liquidation did not entitle the person to share as a claimant in the assets of the state trust company;

(2) the obligation of the state trust company to the person was purchased by or transferred to the person after the date the state trust company was closed for liquidation or for the purpose of increasing set-off rights; or

(3) the obligation of the person or the state trust company is as a trustee or fiduciary.

(b) On request, the receiver shall provide a person with an accounting statement identifying each debt that is due and payable. A person who owes a state trust company an amount that is due and payable against which the person asserts set-off of mutual credits that may become due and payable from the state trust company in the future shall promptly pay to the receiver the amount due and payable. The receiver shall promptly refund, to the extent of the person's prior payment, mutual credits that become due and payable to the person by the state trust company in liquidation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.307. ACTION ON CLAIM. (a) Not later than six months after the last day permitted for the filing of claims or a later date allowed by the court, the receiver shall accept or reject in whole or in part each claim filed against the state trust company in liquidation, except for an unliquidated or undetermined claim governed by Section 186.305. The receiver shall reject a claim if the receiver doubts its validity.

(b) The receiver shall mail written notice to each claimant, specifying the disposition of the person's claim. If a claim is rejected in whole or in part, the receiver in the notice shall specify the basis for rejection and advise the claimant of the procedures and deadline for appeal.

(c) The receiver shall send each claimant a summary schedule of approved and rejected claims by priority class and notify the claimant:

(1) that a copy of a schedule of claims disposition including only the name of the claimant, the amount of the claim allowed, and the amount of the claim rejected is available on request; and

(2) of the procedure and deadline for filing an objection to an approved claim.

(d) The receiver or an agent or employee of the receiver, including an employee of the department, is not liable, and a cause of action may not be brought against the person, for an act or omission of the person relating to the adjustment, negotiation, or settlement of a claim.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.308. OBJECTION TO APPROVED CLAIM. The receiver with court approval shall set a deadline for an objection to an approved claim. On or before that date a depositor, creditor, other claimant, shareholder, participant, or participant-transferee of the state trust company may file an objection to an approved claim. The objection shall be heard and determined by the court. If the objection is sustained, the court shall direct an appropriate modification of the schedule of claims.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1,

1999.

Sec. 186.309. APPEAL OF REJECTED CLAIM. (a) The receiver's rejection of a claim may be appealed in the court in which the receivership proceeding is pending. The appeal must be brought within three months after the date of service of notice of the rejection.

(b) If the appeal is timely brought, review is de novo as if it were an action originally filed in the court, and is subject to the rules of procedure and appeal applicable to civil cases. An action to appeal rejection of a claim by the receiver is separate from the receivership proceeding, and may not be initiated by a claimant intervening in the receivership proceeding.

(c) If the action is not timely brought, the action of the receiver is final and not subject to review.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.310. PAYMENT OF CLAIM. (a) Except as expressly provided otherwise by this subchapter or Subchapter C, without the approval of the court the receiver may not make a payment on a claim, other than a claim for an obligation incurred by the receiver for administrative expenses.

(b) The banking commissioner shall deposit in one or more banks located in this state all money available for the benefit of nonclaiming depositors and creditors. The banking commissioner shall pay the depositors or creditors on demand any amount held for their benefit.

(c) The receiver may periodically make partial distribution to the holders of approved claims if:

(1) all objections have been heard and decided as provided by Section 186.308;

(2) the time for filing appeals has expired as provided by Section 186.309;

(3) money has been made available to provide for the payment of all nonclaiming depositors and creditors in accordance with Subsection (b); and

(4) a proper reserve is established for the pro rata payment of:

(A) rejected claims that have been appealed; and

(B) any claims based on unliquidated or undetermined demands governed by Section 186.305.

(d) As soon as practicable after the determination of all objections, appeals, and claims based on previously unliquidated or undetermined demands governed by Section 186.305 and money has been made available to provide for the payment of all nonclaiming depositors and creditors in accordance with Subsection (b), the receiver shall distribute the assets of the state trust company in satisfaction of approved claims other than claims asserted in a person's capacity as a shareholder, participant, or participant-transferee.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.311. PRIORITY OF CLAIMS AGAINST INSURED STATE TRUST COMPANY. The distribution of assets from the estate of a state trust company the trust deposits of which are insured by the Federal Deposit Insurance Corporation or its successor shall be made in the same order of priority as assets would be distributed on liquidation or purchase of assets and assumption of liabilities of a national bank under federal law.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 186.312. PRIORITY OF CLAIMS AGAINST UNINSURED STATE TRUST COMPANY. (a) The priority of distribution of assets from the estate of a state trust company the trust deposits of which are not insured by the Federal Deposit Insurance Corporation or its successor shall be in accordance with the order of each class as provided by this section. Every claim in each class shall be paid in full, or adequate money shall be retained for that payment, before a member of the next class may receive any payment. A subclass may not be established within a class, except for a preference or subordination within a class expressly created by contract or other instrument or

in the certificate of formation.

(b) Assets shall be distributed in the following order of priority:

(1) administrative expenses;

(2) approved claims of secured trust deposits to the extent of the value of the security as provided by Section 186.304(a);

(3) approved claims of secured creditors to the extent of the value of the security as provided by Section 186.304(b);

(4) approved claims by beneficiaries of insufficient commingled fiduciary money or missing fiduciary property and approved claims of clients of the state trust company;

(5) other approved claims of general creditors not falling within a higher priority under this section, including unsecured claims for taxes and debts due the federal government or a state or local government;

(6) approved claims of a type described by Subdivisions (1)-(5) that were not filed within the period prescribed by this subchapter; and

(7) claims of capital note or debenture holders or holders of similar obligations and proprietary claims of shareholders, participants, participant-transferees, or other owners according to the terms established by issue, class, or series.

(c) Subject to Sections 186.310 and 186.313, the banking commissioner may make a ratable distribution to approved claimants within a particular class or priority if:

(1) all timely filed and approved claims of a higher priority have been satisfied; and

(2) there is insufficient money to fully satisfy all of those claims, after reserving money for administrative expenses as necessary.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 34, eff. June 14, 2013.

Sec. 186.313. EXCESS ASSETS. (a) If state trust company assets remain after the receiver has provided for unclaimed

distributions and all of the liabilities of the state trust company in liquidation, the receiver shall distribute the remaining assets to the shareholders or participants of the state trust company.

(b) If the remaining assets are not liquid or if they otherwise require continuing administration, the receiver may call a meeting of the shareholders or participants and participant-transferees of the state trust company. The receiver shall give notice of the meeting:

(1) in a newspaper of general circulation in the county where the home office of the state trust company was located; and

(2) by written notice to the shareholders or participants and participant-transferees of record at their last known addresses.

(c) At the meeting, the shareholders or participants shall appoint one or more agents to take over the affairs to continue the liquidation for the benefit of the shareholders or participants and participant-transferees. Voting privileges are governed by the state trust company's bylaws and certificate of formation. If a quorum cannot be obtained at the meeting, the banking commissioner shall appoint an agent. An agent appointed under this subsection shall execute and file with the court a bond approved by the court, conditioned on the faithful performance of all the duties of the trust.

(d) Under order of the court the receiver shall transfer and deliver to one or more agents for continued liquidation under the court's supervision all assets of the state trust company remaining in the receiver's hands. The court shall discharge the receiver from further liability to the state trust company and its clients, creditors, shareholders, participants, and participant-transferees.

(e) The state trust company may not resume business and the charter of the state trust company is void on the date the court issues the order directing the receiver to transfer and deliver the remaining assets of the state trust company to one or more agents.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 35, eff. June 14, 2013.

Sec. 186.314. UNCLAIMED PROPERTY. After completion of the

liquidation, any unclaimed property remaining with the receiver shall be delivered to the comptroller as provided by Chapter 74, Property Code.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

CHAPTER 187. MULTISTATE TRUST BUSINESS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 187.001. DEFINITIONS. (a) In this chapter:

(1) "Acquire" means an act that results in direct or indirect control by an out-of-state trust company of a state trust institution, including an act that causes the company to:

(A) merge with the state trust institution;

(B) assume direct or indirect ownership of a controlling interest in any class of voting shares of the state trust institution; or

(C) assume direct ownership or control of all or substantially all of the accounts of a state trust institution.

(2) "Bank" means:

(A) a state bank chartered under Chapter 32 or the laws of another state;

(B) a national bank chartered under federal law; or

(C) a foreign bank that is organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands and that has its deposits insured by the Federal Deposit Insurance Corporation.

(3) "Branch" has the meaning assigned by Section 31.002(a).

(4) "Credit union" means a credit union chartered under Chapter 122, the laws of another state, or federal law.

(5) "De novo trust office" means a trust office located in a host state that:

(A) is originally established by a trust company as a trust office; and

(B) does not become a trust office of the trust company as a result of an acquisition or conversion of another trust institution.

(6) "Foreign bank" has the meaning assigned by Section 1(b)(7), International Banking Act (12 U.S.C. Section 3101(7)), as

amended.

(7) "Home state" means:

(A) with respect to a federally chartered trust institution or a foreign bank, the state in which the institution maintains its principal office; and

(B) with respect to another trust institution, the state that chartered the institution.

(8) "Home state regulator" means the supervisory agency with primary responsibility for chartering and supervising a trust company.

(9) "Host state" means a state, other than the home state of a trust company, or a foreign country in which the trust company maintains or seeks to acquire or establish an office.

(10) "Office" means, with respect to a trust company, the principal office, a trust office, or a representative trust office.

(11) "Out-of-state trust company" means a trust company:

(A) whose home state is another state; or

(B) that is chartered under the laws of a foreign country.

(12) "Principal office" means:

(A) with respect to a state trust company, its home office as defined by Section 181.002(a); and

(B) with respect to a bank, savings bank, savings association, foreign bank, or out-of-state trust company, its main office or principal place of business in the United States.

(13) "Representative trust office" means an office at which a trust company has been authorized by the banking commissioner to engage in activities other than acting as a fiduciary as provided by Subchapter C.

(14) "Savings association" means a savings and loan association chartered under Chapter 62, the laws of another state, or federal law.

(15) "Savings bank" means a savings bank chartered under Chapter 92, the laws of another state, or federal law.

(16) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(17) "State trust institution" means a trust institution whose home state is this state.

(18) "Supervisory agency" means:

(A) an agency of another state or a foreign country with primary responsibility for chartering and supervising a trust institution; and

(B) with respect to a federally chartered trust institution or foreign bank, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, or the National Credit Union Administration, as applicable.

(19) "Trust company" means a state trust company or a company chartered under the laws of another state or a foreign country to conduct a trust business that is not a bank, credit union, savings association, savings bank, or foreign bank.

(20) "Trust institution" means a bank, credit union, foreign bank, savings association, savings bank, or trust company that is authorized by its charter to conduct a trust business.

(21) "Trust office" means an office, other than the principal office, at which a trust company is licensed by the banking commissioner to conduct a trust business.

(b) The definitions provided by Section 181.002(a) apply to this chapter to the extent not inconsistent with this chapter.

(c) The definitions shall be liberally construed to accomplish the purposes of this chapter.

(d) The finance commission by rule may adopt other definitions to accomplish the purposes of this chapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.

Sec. 187.002. COMPANIES AUTHORIZED TO CONDUCT A TRUST BUSINESS. (a) A company may not conduct a trust business in this state unless the company is a trust institution and is:

(1) a state trust company chartered pursuant to this subtitle;

(2) a bank, savings association, savings bank, or credit union that maintains its principal office or a branch in this state in accordance with governing law, or another office in this state with the power to conduct a trust business to the extent permitted by

rule;

(3) a trust company chartered under the laws of another state or a foreign country that has a trust office in this state licensed by the banking commissioner pursuant to this chapter; or

(4) a foreign bank with an office in this state that is authorized to act as a fiduciary pursuant to Section 204.106.

(b) Notwithstanding Subsection (a), a trust institution that does not maintain a principal office, branch, or trust office in this state may act as a fiduciary in this state to the extent permitted by Subchapter A, Chapter 505, Estates Code.

(c) A company does not engage in the trust business in this state in a manner requiring a charter or license under this subtitle by engaging in an activity identified in Section 182.021, except that the registration requirements of Section 187.202 may apply to a trust representative office engaging in the activity.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 20.017, eff. September 1, 2015.

Sec. 187.003. INTERSTATE TRUST BUSINESS OF STATE TRUST COMPANY. Subject to the approval of the banking commissioner pursuant to Section 182.203, a state trust company may engage in the trust business in another state or a foreign country at a trust office or a trust representative office to the extent permitted by and subject to applicable laws of the state or foreign country.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.

Sec. 187.004. TRUST BUSINESS OF OUT-OF-STATE TRUST COMPANY. (a) An out-of-state trust company that establishes or maintains an office in this state under this chapter may conduct any activity at the office that would be authorized under the laws of this state for a state trust company to conduct at the office.

(b) Before establishing an office in this state, an out-of-state trust company must comply with Section 201.102.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.

Sec. 187.005. DESIGNATION OF TRUSTEE AND GOVERNING LAW. (a) Unless another law restricts the designation of trustee, a person residing in this state may designate a trust institution to act as a fiduciary on behalf of the person.

(b) Unless another law specifies governing law, if a trust or its subject matter bears a reasonable relation to this state and also to another state or a foreign country, a trust institution and its affected client may agree that the law of this state or of the other state or country governs their rights and duties, including the law of a state or a foreign country where the affected client resides or where the trust institution has its principal office.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 451, Sec. 21, eff. September 1, 2007.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 21, eff. September 1, 2007.

Sec. 187.006. TAXATION. An out-of-state trust institution doing business in this state is subject to the franchise tax to the extent provided by Chapter 171, Tax Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.

Sec. 187.007. SEVERABILITY. The provisions of this chapter or applications of those provisions are severable as provided by Section 312.013, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.

SUBCHAPTER B. OUT-OF-STATE TRUST COMPANY TRUST OFFICE

Sec. 187.101. TRUST OFFICES IN THIS STATE. An out-of-state trust company may engage in a trust business at an office in this state only if it establishes and maintains a trust office in this state as permitted by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.

Sec. 187.102. ESTABLISHING AN INTERSTATE TRUST OFFICE. (a) An out-of-state trust company that does not operate a trust office in this state may not establish and maintain a de novo trust office in this state unless:

(1) a state trust company would be permitted to establish a de novo trust office in the home state or foreign country of the out-of-state trust company; and

(2) a bank whose home state is this state would be permitted to establish a de novo branch in the home state or foreign country of the out-of-state trust company.

(b) Subject to Subsection (a), a de novo trust office may be established in this state under this section through the acquisition of a trust office in this state of an existing trust institution.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.

Sec. 187.103. ACQUIRING AN INTERSTATE TRUST OFFICE. (a) An out-of-state trust company that does not operate a trust office in this state and that meets the requirements of this subchapter may acquire an existing trust institution in this state and after the acquisition operate and maintain the acquired institution as a trust office in this state, subject to Subchapter A, Chapter 183, or Subchapter A, Chapter 33, if applicable.

(b) An out-of-state trust institution that does not operate a trust office in this state may not establish and maintain a trust office in this state through the acquisition of a trust office of an existing trust institution except as provided by Section 187.102.

This section does not affect or prohibit a trust institution or other person from chartering a state trust company pursuant to Section 182.001.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 17, eff. June 14, 2013.

Sec. 187.104. REQUIREMENT OF NOTICE. An out-of-state trust company desiring to establish and maintain a de novo trust office or acquire an existing trust institution in this state and to operate and maintain the acquired institution as a trust office pursuant to this subchapter shall provide written notice of the proposed transaction to the banking commissioner on or after the date on which the out-of-state trust company applies to the home state regulator for approval to establish and maintain or acquire the trust office. The filing of the notice shall be preceded or accompanied by a copy of the resolution adopted by the board authorizing the additional office and the filing fee, if any, prescribed by law. The written notice must contain sufficient information to enable an informed decision under Section 187.105.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.

Sec. 187.105. CONDITIONS FOR APPROVAL. (a) A trust office of an out-of-state trust company may be acquired or established in this state under this subchapter if:

(1) the out-of-state trust company confirms in writing to the banking commissioner that while it maintains a trust office in this state, it will comply with all applicable laws of this state;

(2) the out-of-state trust company provides satisfactory evidence to the banking commissioner of compliance with Section 201.102 and the applicable requirements of its home state regulator for acquiring or establishing and maintaining the office;

(3) all filing fees have been paid as required by law; and

(4) the banking commissioner finds that:

(A) applicable conditions of Section 187.102 or 187.103 have been met;

(B) if a state bank is being acquired, the applicable requirements of Subchapter A, Chapter 33 have been met, or if a state trust company is being acquired, the applicable requirements of Subchapter A, Chapter 183 have been met; and

(C) any conditions imposed by the banking commissioner pursuant to Subsection (b) have been satisfied.

(b) The banking commissioner may condition approval of a trust office on compliance by the out-of-state trust company with any requirement applicable to formation of a state trust company pursuant to Sections 182.003(b) and 182.007.

(c) If all requirements of Subsection (a) have been met, the out-of-state trust company may commence business at the trust office on the 61st day after the date the banking commissioner notifies the company that the notice required by Section 187.104 has been accepted for filing, unless the banking commissioner specifies an earlier or later date.

(d) The 60-day period of review may be extended by the banking commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust company may establish the office only on prior written approval by the banking commissioner.

(e) If all requirements of Subsection (a) have been met, the banking commissioner may otherwise deny approval of the office if the banking commissioner finds that the out-of-state trust company lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office is contrary to the public interest. In acting on the notice, the banking commissioner shall consider the views of the appropriate supervisory agencies.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 18, eff. June 14, 2013.

Sec. 187.106. ADDITIONAL TRUST OFFICES. An out-of-state trust company that maintains a trust office in this state under this subchapter may establish or acquire additional trust offices or representative trust offices in this state to the same extent that a state trust company may establish or acquire additional offices in this state pursuant to the procedures for establishing or acquiring the offices set forth in Section 182.203.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.

SUBCHAPTER C. OUT-OF-STATE TRUST INSTITUTION REPRESENTATIVE TRUST OFFICE

Sec. 187.201. REPRESENTATIVE TRUST OFFICE BUSINESS. (a) An out-of-state trust institution may establish a representative trust office as permitted by this subchapter to:

(1) solicit, but not accept, fiduciary appointments;

(2) act as a fiduciary in this state to the extent permitted for a foreign corporate fiduciary by Subchapter A, Chapter 505, Estates Code;

(3) perform ministerial duties with respect to existing clients and accounts of the trust institution;

(4) engage in an activity permitted by Section 182.021; and

(5) to the extent the office is not acting as a fiduciary:

(A) receive for safekeeping personal property of every description;

(B) act as assignee, bailee, conservator, custodian, escrow agent, registrar, receiver, or transfer agent; and

(C) act as financial advisor, investment advisor or manager, agent, or attorney-in-fact in any agreed capacity.

(b) Except as provided by Subsection (a), a trust representative office may not act as a fiduciary or otherwise engage in the trust business in this state.

(c) Subject to the requirements of this subchapter, an out-of-state trust institution may establish and maintain representative trust offices anywhere in this state.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 20.018, eff. September 1, 2015.

Sec. 187.202. REGISTRATION OF REPRESENTATIVE TRUST OFFICE. (a) Except as provided by Subsection (e) with respect to a credit union, a savings association, or a savings bank, an out-of-state trust institution that does not maintain a branch or trust office in this state and that desires to establish or acquire and maintain a representative trust office shall:

(1) file a notice on a form prescribed by the banking commissioner, setting forth:

(A) the name of the out-of-state trust institution;

(B) the location of the proposed office; and

(C) satisfactory evidence that the notificant is a trust institution;

(2) pay the filing fee, if any, prescribed by law; and

(3) submit a copy of the resolution adopted by the board authorizing the representative trust office and a copy of the trust institution's registration filed with the secretary of state pursuant to Section 201.102.

(b) The notificant may commence business at the representative trust office on the 31st day after the date the banking commissioner receives the notice unless the banking commissioner specifies an earlier or later date.

(c) The 30-day period of review may be extended by the banking commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may establish the representative trust office only on prior written approval by the banking commissioner.

(d) The banking commissioner may deny approval of the representative trust office if the banking commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interests. In acting on the notice, the banking commissioner shall consider the views of the appropriate supervisory agencies.

(e) A credit union, savings association, or savings bank that does not maintain a branch in this state and desires to establish or

acquire and maintain a representative trust office shall comply with this section, except that the notice required by Subsection (a) must be filed with, and the duties and responsibilities of the banking commissioner under Subsections (b)-(d) shall be performed by:

(1) the Texas credit union commissioner, with respect to a credit union; or

(2) the Texas savings and mortgage lending commissioner, with respect to a savings association or savings bank.

(f) An out-of-state trust institution that fails to register as required by this section is subject to Subchapter C, Chapter 185.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.056, eff. September 1, 2007.

SUBCHAPTER D. SUPERVISION OF OUT-OF-STATE TRUST COMPANY

Sec. 187.301. COOPERATIVE AGREEMENTS; FEES. (a) To carry out the purposes of this subtitle, the banking commissioner may:

(1) enter into cooperative, coordinating, or information sharing agreements with another supervisory agency or an organization affiliated with or representing one or more supervisory agencies;

(2) with respect to periodic examination or other supervision or investigation, accept reports of examination or investigation by, and reports submitted to, another supervisory agency in lieu of conducting examinations or investigations or receiving reports as might otherwise be required or permissible under this subtitle;

(3) enter into contracts with another supervisory agency having concurrent regulatory or supervisory jurisdiction to engage the services of the agency for reasonable compensation to assist with the banking commissioner's performance of official duties under this subtitle or other law, or to provide services to the agency for reasonable compensation in connection with the agency's performance of official duties under law, except that Chapter 2254, Government Code, does not apply to those contracts;

(4) enter into joint examinations or joint enforcement actions with another supervisory agency having concurrent regulatory

or supervisory jurisdiction, except that the banking commissioner may independently take action under Section 187.305 if the banking commissioner determines that the action is necessary to carry out the banking commissioner's responsibilities under this subtitle or to enforce compliance with the laws of this state; and

(5) assess supervisory and examination fees to be paid by an out-of-state trust company that maintains one or more offices in this state in connection with the banking commissioner's performance of duties under this subtitle.

(b) Supervisory or examination fees assessed by the banking commissioner in accordance with this subtitle may be shared with another supervisory agency or an organization affiliated with or representing one or more supervisory agencies in accordance with an agreement between the banking commissioner and the agency or organization. The banking commissioner may also receive a portion of supervisory or examination fees assessed by another supervisory agency in accordance with an agreement between the banking commissioner and the agency.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.

Sec. 187.302. EXAMINATIONS; PERIODIC REPORTS. (a) To the extent consistent with Section 187.301, the banking commissioner may make examinations of a trust office or trust representative office established and maintained in this state by an out-of-state trust company pursuant to this chapter as the banking commissioner considers necessary to determine whether the office is being operated in compliance with the laws of this state and in accordance with safe and sound fiduciary practices. Sections 181.104-181.106 apply to the examinations.

(b) The finance commission may by rule prescribe requirements for periodic reports regarding a trust office or trust representative office in this state. The required reports must be provided by the trust institution maintaining the office. Reporting requirements under this subsection must be appropriate for the purpose of enabling the banking commissioner to discharge the responsibilities of the banking commissioner under this chapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1,

2001.

Sec. 187.303. INTERPRETIVE STATEMENTS AND OPINIONS. (a) Subject to Subsection (b), to encourage the effective coordination and implementation of home state laws and host state laws with respect to interstate trust business, the banking commissioner, directly or through a deputy banking commissioner or department attorney in the manner provided by Sections 181.101 and 181.102, and with the effect provided by Section 181.103, may issue:

(1) an interpretive statement for the general guidance of trust institutions in this state and the public; or

(2) an opinion interpreting or determining the applicability of the laws of this state to the trust business and the operation of a branch, trust office, or another office in this state of an out-of-state trust institution, or in other states by state trust companies.

(b) With respect to the trust business of a credit union, savings association, or savings bank, the duties and responsibilities of the banking commissioner under Subsection (a) shall be performed by:

(1) the Texas credit union commissioner, with respect to a credit union; or

(2) the Texas savings and mortgage lending commissioner, with respect to a savings association or savings bank.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 3.14, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.057, eff. September 1, 2007.

Sec. 187.304. CONFIDENTIAL INFORMATION. Information obtained directly or indirectly by the banking commissioner relative to the financial condition or business affairs of a trust institution, other than the public portions of a report of condition or income statement, or a present, former, or prospective shareholder, participant, officer, director, manager, affiliate, or service

provider of the trust institution, whether obtained through application, examination, or otherwise, and each related file or record of the department is confidential and may not be disclosed by the banking commissioner or an employee of the department except as expressly provided by Subchapter D, Chapter 181.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.

Sec. 187.305. ENFORCEMENT; APPEALS. (a) If the banking commissioner determines that an out-of-state trust company has violated this subtitle or other applicable law of this state, the banking commissioner may take all enforcement actions the banking commissioner would be empowered to take if the out-of-state trust company were a state trust company, except that the banking commissioner shall promptly give notice to the home state regulator of each enforcement action to be taken against an out-of-state trust company and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action. An out-of-state trust company may appeal a final order or other decision of the banking commissioner under this subtitle as provided by Sections 181.202 and 181.204.

(b) Notwithstanding Subsection (a), the banking commissioner may enforce this subtitle against a trust institution by appropriate action in the courts, including an action for injunctive relief, if the banking commissioner concludes the action is necessary or desirable.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 29, eff. September 1, 2019.

Sec. 187.306. NOTICE OF SUBSEQUENT EVENT. Each out-of-state trust company that has established and maintains an office in this state pursuant to this subtitle shall give written notice, at least 30 days before the effective date of the event, or, in the case of an emergency transaction, a shorter period before the effective date

consistent with applicable state or federal law, to the banking commissioner of:

(1) a merger or other transaction that would cause a change of control with respect to the trust company, with the result that an application would be required to be filed with the home state regulator or a federal supervisory agency;

(2) a transfer of all or substantially all of the trust accounts or trust assets of the out-of-state trust company to another person; or

(3) the closing or disposition of an office in this state.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 6.001(a), eff. Sept. 1, 2001.

CHAPTER 199. MISCELLANEOUS PROVISIONS

Sec. 199.001. SLANDER OR LIBEL OF STATE TRUST COMPANY. (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 state trust company located in this state; or

(2) intentionally, to injure the state trust company, 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 a state trust company located in this state.

(b) An offense under this section is a state jail felony.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999.

Sec. 199.002. AUTHORITY TO ACT AS 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 participation interest in or employment by a trust institution that is an interested party in the underlying transaction, including a state trust company or a trust institution organized under the laws of another state that lawfully maintains an office in this state.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.023(a), eff. Sept. 1, 2001.

Sec. 199.003. SUCCESSION OF TRUST POWERS. (a) If, at the time of a merger, reorganization, conversion, sale of substantially all of its assets under Chapter 182 or 187 or other applicable law, or sale of substantially all of its trust accounts and related activities at a separate branch or trust office, a reorganizing or selling state trust company is acting as trustee, guardian, executor, or administrator, or in another fiduciary capacity, a successor or purchasing trust 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 trust 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 trust 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 trust institution had been originally designated as the fiduciary.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.024(a), eff. Sept. 1, 2001.

Sec. 199.004. DISCOVERY OF CLIENT RECORDS. Civil discovery of a client record maintained by a trust institution, including a state trust company or a trust institution organized under the laws of another state that lawfully maintains an office in this state, is governed by Section 59.006.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1,

1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.025(a), eff. Sept. 1, 2001.

Sec. 199.005. COMPLIANCE REVIEW COMMITTEE. A trust company may establish a compliance review committee as provided by Section 59.009.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.16(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.026(a), eff. Sept. 1, 2001.

SUBTITLE G. BANK HOLDING COMPANIES; INTERSTATE BANK OPERATIONS

CHAPTER 201. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 201.001. SCOPE OF SUBTITLE. (a) This subtitle:

(1) sets forth the conditions under which a company may acquire a Texas bank or a Texas bank holding company, pursuant to the provisions of Chapter 202;

(2) permits interstate branching under the Interstate Banking and Branching Efficiency Act pursuant to the provisions of Chapter 203; and

(3) provides for state regulation of the participation by foreign banks in the financial markets of this state, pursuant to the provisions of Chapter 204.

(b) This subtitle is not intended to discriminate against out-of-state banks and bank holding companies in a manner that would violate the Interstate Banking and Branching Efficiency Act.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 201.002. DEFINITIONS. (a) Unless the context requires otherwise, in this subtitle:

(1) "Acquire" means an act that results in direct or indirect control by a company of a bank holding company or a bank, including an act that causes:

(A) the company to merge with a bank holding company or a bank;

(B) the company to assume direct or indirect ownership or control of:

(i) more than 25 percent of any class of voting shares of a bank holding company or a bank, if the acquiring company was not a bank holding company before the acquisition;

(ii) more than five percent of any class of voting shares of a bank holding company or a bank, if the acquiring company was a bank holding company before the acquisition; or

(iii) all or substantially all of the assets of a bank holding company or a bank; or

(C) an application relating to control of a bank holding company or bank to be filed with a federal bank supervisory agency.

(2) "Affiliate" has the meaning assigned by Section 2(k), Bank Holding Company Act (12 U.S.C. Section 1841(k)).

(3) "Agency" when used in reference to an office of a foreign bank, has the meaning assigned by Section 1(b)(1), International Banking Act (12 U.S.C. Section 3101(1)).

(4) "Bank":

(A) for purposes of Chapter 202 and the laws of this state as they relate to Chapter 202, has the meaning assigned by Section 2(c), Bank Holding Company Act (12 U.S.C. Section 1841(c));

(B) for purposes of Chapter 203 and the laws of this state as they relate to Chapter 203, has the meaning assigned to the term "insured bank" by Section 3(h), Federal Deposit Insurance Act (12 U.S.C. Section 1813(h)), except that the term does not include a foreign bank unless it is organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands and its deposits are insured by the Federal Deposit Insurance Corporation; and

(C) for purposes of Chapter 204 and the laws of this state as they relate to Chapter 204, has the meaning assigned by Section 2(c), Bank Holding Company Act (12 U.S.C. Section 1841(c)), or Section 3(a)(1), Federal Deposit Insurance Act (12 U.S.C. Section 1813(a)(1)), except that the term does not include a foreign bank or a branch or agency of a foreign bank.

(5) "Bank holding company" has the meaning assigned by Section 2(a), Bank Holding Company Act (12 U.S.C. Section 1841(a)), and includes a financial holding company.

(6) "Bank Holding Company Act" means the federal Bank

Holding Company Act of 1956 (12 U.S.C. Section 1841 et seq.), as amended.

(7) "Bank supervisory agency" means any of the following:

(A) an agency of another state with primary responsibility for chartering and supervising banks;

(B) the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, or the Bureau of Consumer Financial Protection, and any successor to these agencies; or

(C) an agency of a country, including a colony, dependency, possession, or political subdivision of a country, other than the United States with primary responsibility for chartering and supervising banks.

(8) "Branch" has the meaning assigned by Section 31.002(a), except that for purposes of Chapter 204 and the laws of this state as they relate to Chapter 204 the term:

(A) with respect to an office of a foreign bank, has the meaning assigned by Section 1(b)(3), International Banking Act (12 U.S.C. Section 3101(3)); and

(B) with respect to an office of a bank as defined by this section for the purposes of Chapter 204, has the meaning assigned to the term "domestic branch" by Section 3(o), Federal Deposit Insurance Act (12 U.S.C. Section 1813(o)).

(9) "Commissioner" has the meaning assigned to the term "banking commissioner" by Section 31.002(a), except that for purposes of Chapter 203 and the laws of this state as they relate to Chapter 203, with respect to a state savings bank, the term means the savings and mortgage lending commissioner of Texas.

(10) "Company" has the meaning assigned by Section 2(b), Bank Holding Company Act (12 U.S.C. Section 1841(b)), and includes a bank holding company.

(11) "Control" shall be construed consistently with Section 2(a)(2), Bank Holding Company Act (12 U.S.C. Section 1841(a)(2)), and regulations and interpretive rulings of the Board of Governors of the Federal Reserve System.

(12) "De novo branch" means a branch of a bank located in a host state that:

(A) is originally established by the bank as a branch; and

(B) does not become a branch of the bank as a result

of:

(i) the acquisition of another bank or a branch of another bank; or

(ii) the merger or conversion involving the bank or branch.

(13) "Deposit" has the meaning assigned by Section 3(l), Federal Deposit Insurance Act (12 U.S.C. Section 1813(l)).

(14) "Depository institution" means an institution included for any purpose within the definitions of "insured depository institution" as assigned by Sections 3(c)(2) and 3(c)(3), Federal Deposit Insurance Act (12 U.S.C. Sections 1813(c)(2) and 1813(c)(3)).

(15) "Federal agency" means an agency of a foreign bank that is licensed by the Comptroller of the Currency pursuant to Section 4, International Banking Act (12 U.S.C. Section 3102).

(16) "Federal branch" means a branch of a foreign bank that is licensed by the Comptroller of the Currency pursuant to Section 4, International Banking Act (12 U.S.C. Section 3102).

(17) "Federal Deposit Insurance Act" means the Federal Deposit Insurance Act (12 U.S.C. Section 1811 et seq.), as amended.

(18) "Foreign bank" has the meaning assigned by Section 1(b)(7), International Banking Act (12 U.S.C. Section 3101(7)).

(19) "Foreign bank holding company" means a bank holding company that is organized under the laws of a country other than the United States or a territory or possession of the United States, and includes a foreign financial holding company.

(20) "Foreign person" means a natural or juridical person who is a citizen or national of one or more countries, including any colonies, dependencies, or possessions of the countries, other than the United States.

(21) "Home state" means:

(A) with respect to a national bank, the state in which the main office of the bank is located;

(B) with respect to a state bank, the state by which the bank is chartered;

(C) with respect to a foreign bank, the state determined to be the home state of the foreign bank under Section 5(c), International Banking Act (12 U.S.C. Section 3103(c)); and

(D) with respect to a bank holding company, the state in which the total deposits of all bank subsidiaries of the company are the largest on the later of July 1, 1966, or the date on which

the company became a bank holding company.

(22) "Home state regulator" means:

(A) with respect to an out-of-state bank holding company, the bank supervisory agency of the home state of the bank holding company; and

(B) with respect to an out-of-state state bank, the bank supervisory agency of the state in which the bank is chartered.

(23) "Host state" means:

(A) with respect to a bank, a state other than the home state of the bank in which the bank maintains or seeks to establish and maintain a branch; and

(B) with respect to a bank holding company, a state other than the home state of the company in which the company controls or seeks to control a bank subsidiary.

(24) "International Banking Act" means the federal International Banking Act of 1978 (12 U.S.C. Section 3101 et seq.), as amended.

(25) "Interstate Banking and Branching Efficiency Act" means the federal Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328, codified at various sections of Title 12, United States Code.

(26) "Interstate branch" means a branch of a bank or a branch of a foreign bank, as the context requires, established, acquired, or retained pursuant to the Interstate Banking and Branching Efficiency Act, outside the home state of the bank or foreign bank. The term does not include, with respect to a foreign bank, a limited branch as that term is defined by this section.

(27) "Interstate merger transaction" means:

(A) the merger of banks with different home states and the conversion of branches of a bank involved in the merger into branches of the resulting bank; or

(B) the purchase of all or substantially all of the assets, including all or substantially all of the branches, of a bank whose home state is different from the home state of the acquiring bank.

(28) "Limited branch" means a branch of a foreign bank that accepts only the deposits that would be permissible for a corporation organized under Section 25A, Federal Reserve Act (12 U.S.C. Section 611 et seq.), in accordance with Section 5(a)(7), International Banking Act (12 U.S.C. Section 3103(a)(7)).

(29) "Out-of-state bank" means a bank whose home state is another state.

(30) "Out-of-state bank holding company" means a bank holding company whose home state is another state, and includes an out-of-state financial holding company.

(31) "Out-of-state foreign bank" means a foreign bank whose home state is another state.

(32) "Out-of-state state bank" means a bank chartered under the laws of another state.

(33) "Representative office" has the meaning assigned by Section 1(b)(15), International Banking Act (12 U.S.C. Section 3101(15)).

(34) "Resulting bank" means a bank that results from an interstate merger transaction.

(35) "State" means a state of the United States, the District of Columbia, a territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands, except that for purposes of Chapter 202 and the laws of this state as they relate to Chapter 202 the term means a state, territory, or other possession of the United States, including the District of Columbia.

(36) "State bank" means a Texas state bank or an out-of-state state bank, including an out-of-state state savings bank.

(37) "State savings bank" has the meaning assigned to the term "savings bank" by Section 3(g), Federal Deposit Insurance Act (12 U.S.C. Section 1813(g)), and includes a savings bank organized under Subtitle C or under similar laws of another state.

(38) "Subsidiary" has the meaning assigned by Section 2(d), Bank Holding Company Act (12 U.S.C. Section 1841(d)).

(39) "Texas bank" means a bank whose home state is this state, except that for purposes of Chapter 202 and the laws of this state as they relate to Chapter 202 the term means a Texas state bank or a national bank organized under federal law with its main office in this state.

(40) "Texas bank holding company" means a bank holding company whose home state is this state and that is not controlled by a bank holding company other than a Texas bank holding company, and includes a Texas financial holding company.

(41) "Texas representative office" means a representative office that is located in this state and registered pursuant to

Subchapter C, Chapter 204.

(42) "Texas state agency," means, when used in reference to an office of a foreign bank, an agency of a foreign bank that is located in this state and licensed pursuant to Subchapter B, Chapter 204.

(43) "Texas state bank" means a bank that is organized under Subtitle A.

(44) "Texas state branch," means, when used in reference to an office of a foreign bank, a branch of a foreign bank that is located in this state and licensed pursuant to Subchapter B, Chapter 204.

(45) "United States" means:

(A) when used in a geographical sense, the several states, the District of Columbia, Puerto Rico, Guam, American Samoa, the American Virgin Islands, the Trust Territory of the Pacific Islands, and other territories of the United States; and

(B) when used in a political sense, the federal government of the United States.

(46) "Financial holding company" means a bank holding company that has elected to be treated as a financial holding company under 12 U.S.C. Section 1843(l).

(47) "Functional regulatory agency" means a department or agency of this state, another state, the United States, or a foreign government with whom the United States currently maintains diplomatic relations that regulates and charters, licenses, or registers persons engaged in financial activities or activities incidental or complementary to financial activities, including activities related to banking, insurance, or securities.

(b) The definitions provided by Section 31.002 apply to this subtitle to the extent not inconsistent with this section and as the context requires.

(c) The definitions shall be liberally construed to accomplish the purposes of this subtitle.

(d) The finance commission by rule may adopt other definitions to accomplish the purposes of this subtitle.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 27, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.058, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 19, eff. June 14, 2013.

Sec. 201.003. RULES. (a) The finance commission may adopt rules to accomplish the purposes of this subtitle, including rules necessary or reasonable to:

(1) implement and clarify this subtitle in a manner consistent with and to the extent permitted by applicable federal law;

(2) preserve or protect the safety and soundness of banking in this state;

(3) grant at least the same rights and privileges to Texas state banks that are or may be granted to other depository institutions;

(4) recover the cost of maintaining and operating the department and the cost of enforcing this subtitle by imposing and collecting ratable and equitable fees for supervision and regulation, including fees for notices, applications, and examinations; and

(5) facilitate the fair hearing and adjudication of matters before the commissioner and the finance commission.

(b) In adopting rules, the finance commission shall consider the need to:

(1) coordinate with applicable federal law;

(2) promote a stable banking environment;

(3) provide the public with convenient, safe, and competitive banking services;

(4) preserve and promote the competitive position of Texas state banks with regard to other depository institutions consistent with the safety and soundness of Texas state banks and the Texas state bank system; and

(5) allow for economic development in this state.

(c) The presence or absence in this subtitle of a specific reference to rules regarding a particular subject does not enlarge or diminish the rulemaking authority provided by this section.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 28, eff. Sept.

1, 2001.

Sec. 201.004. LAW APPLICABLE TO INTERSTATE BRANCHES. (a) The laws of this state, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, apply to an interstate branch located in this state to the same extent the laws of this state would apply if the branch in this state were a branch of an out-of-state national bank in this state, except to the extent otherwise provided under federal law. An out-of-state state bank that establishes an interstate branch in this state under this subtitle may conduct any activity at the branch in this state that is permissible under the laws of the bank's home state, to the extent the activity is permissible for a Texas state bank or for a branch of an out-of-state national bank in this state.

(b) To the extent provided by Section 4.102(c), Business & Commerce Code, the laws of this state govern a deposit contract between a bank and a consumer account holder if the branch or separate office of the bank that accepts the deposit contract is located in this state.

(c) Without limiting Subsection (a), for purposes of the laws of this state relating to authority to act as a fiduciary, depository of public funds, or custodian of securities pledged to secure public funds, or authority to engage in repurchase transactions with public entities, a legally operating interstate branch in this state is considered to be in, within, located in, authorized to do business in, domiciled in, and chartered in this state.

(d) This subtitle does not limit or affect the authority of:

(1) the home state regulator of a bank's home state to enforce any law applicable to a branch of an out-of-state state bank;

(2) a law enforcement officer, a regulatory supervisor, other than the commissioner, or another official of this state to enforce the laws of this state applicable to a branch of an out-of-state state bank; or

(3) this state to adopt, apply, or administer any tax or method of taxation to a bank, bank holding company, or foreign bank, or any affiliate of a bank, bank holding company, or foreign bank, to the extent that the tax or tax method is otherwise permissible by or under the United States Constitution or other federal law.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 20, eff. June 14, 2013.

Sec. 201.005. COOPERATIVE AGREEMENTS; FEES. (a) To carry out the purposes of this subtitle, to the extent permitted by federal law, the commissioner may:

(1) enter into cooperative, coordinating, or information sharing agreements with another bank supervisory agency, a functional regulatory agency, or an organization affiliated with or representing one or more bank supervisory agencies;

(2) with respect to periodic examination or other supervision or investigation, accept reports of examination or investigation by, and reports submitted to, another bank supervisory agency or functional regulatory agency in lieu of conducting examinations or investigations or receiving reports as might otherwise be required or permissible under this subtitle;

(3) enter into contracts with another bank supervisory agency or functional regulatory agency having concurrent regulatory or supervisory jurisdiction to engage the services of the agency for reasonable compensation to assist in connection with the commissioner's performance of official duties under this subtitle or other law, or to provide services to the agency for reasonable compensation in connection with the agency's performance of official duties under law, except that Chapter 2254, Government Code, does not apply to the contracts;

(4) enter into joint examinations or joint enforcement actions with another bank supervisory agency or functional regulatory agency having concurrent regulatory or supervisory jurisdiction, except that the commissioner may independently take action under Section 201.009 if the commissioner determines that the action is necessary to carry out the commissioner's responsibilities under this subtitle or to enforce compliance with the laws of this state; and

(5) assess supervisory and examination fees to be paid by a state bank, state savings bank, bank holding company, or foreign bank in connection with the commissioner's performance of duties under this subtitle.

(b) Supervisory or examination fees assessed by the commissioner in accordance with this subtitle may be shared with another bank supervisory agency, a functional regulatory agency, or an organization affiliated with or representing one or more bank supervisory agencies in accordance with an agreement between the commissioner and the agency or organization. The commissioner may also receive a portion of supervisory or examination fees assessed by another bank supervisory agency or functional regulatory agency in accordance with an agreement between the commissioner and the agency.

(c) A cooperative agreement entered into by the commissioner under this section does not limit the authority of a law enforcement officer, regulatory supervisor, or other official of this state who is not a party to the agreement to enforce the laws of this state applicable to a branch of an out-of-state state bank located in this state.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 29, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 21, eff. June 14, 2013.

Sec. 201.006. ISSUANCE OF INTERPRETIVE STATEMENTS AND OPINIONS. (a) To encourage the effective coordination and implementation of home state laws and host state laws with respect to interstate branching, the commissioner, directly or through a deputy commissioner or department attorney, may:

(1) issue interpretive statements containing matters of general policy to guide the public and banks and bank holding companies subject to this subtitle;

(2) amend or repeal a published interpretive statement by issuing an amended statement or notice of repeal of a statement and publishing the statement or notice;

(3) issue, in response to specific requests from the public or the banking industry, opinions interpreting this subtitle or determining the applicability of laws of this state to the operation of interstate branches or other offices in this state by out-of-state banks or in other states by Texas banks; and

(4) amend or repeal an opinion by issuing an amended opinion or notice of repeal of an opinion, except that the requesting party may rely on the original opinion if:

(A) all material facts were originally disclosed to the commissioner;

(B) the safety and soundness of the affected bank or bank holding company will not be affected by further reliance on the original opinion; and

(C) the text and interpretation of relevant, governing provisions of applicable home state, host state, and federal law have not been changed by legislative or judicial action.

(b) An interpretive statement or opinion may be disseminated by newsletter, via electronic medium such as the internet, in a volume of statutes or related materials published by the commissioner or others, or by other means reasonably calculated to notify persons affected by the interpretive statement or opinion. An opinion may be disseminated to the public if the commissioner determines that the opinion is useful for the general guidance and convenience of the public or banks or bank holding companies. A published opinion must be redacted to preserve the confidentiality of the requesting party unless the requesting party consents to be identified in the published opinion. Notice of an amended or withdrawn statement or opinion must be disseminated in a substantially similar manner as the affected statement or opinion was originally disseminated.

(c) An interpretive statement or opinion issued under this subtitle does not have the force of law and is not a rule for the purposes of Chapter 2001, Government Code, unless adopted by the finance commission as provided by Chapter 2001, Government Code. An interpretive statement or opinion is an administrative construction of this subtitle entitled to great weight if the construction is reasonable and does not conflict with this subtitle.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 412, Sec. 5.01, eff. Sept. 1, 2001.

Sec. 201.007. CONFIDENTIALITY. Except as expressly provided otherwise in this subtitle, confidentiality of information obtained by the commissioner under this subtitle is governed by Subchapter D,

Chapter 31, or, with respect to a state savings bank, Subtitle C, and may not be disclosed by the commissioner or an employee of the commissioner's department except as provided by Subchapter D, Chapter 31, or, with respect to a state savings bank, Subtitle C.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 201.008. NOTICE OF SUBSEQUENT EVENT. Each out-of-state state bank that has established and maintains an interstate branch in this state pursuant to this subtitle shall give written notice to the commissioner, at least 30 days before the effective date of the event, or in the case of an emergency transaction, within a shorter period consistent with applicable state or federal law, of a merger or other transaction that would cause a change of control with respect to the bank or a bank holding company that controls the bank, with the result that an application would be required to be filed with the bank's home state regulator or a federal bank supervisory agency, including an application filed pursuant to the Change in Bank Control Act of 1978 (12 U.S.C. Section 1817(j)), as amended, or the Bank Holding Company Act (12 U.S.C. Section 1841 et seq.).

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 201.009. ENFORCEMENT; APPEALS. (a) If the commissioner determines that a bank holding company or a foreign bank has violated this subtitle or other applicable law of this state, the commissioner may take any enforcement action the commissioner would be empowered to take if the bank holding company or foreign bank were a Texas state bank, except that the commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state bank holding company or foreign bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action. A bank holding company or foreign bank may appeal a final order or other decision of the commissioner under this subtitle as provided by Sections 31.202 and 31.204.

(b) If the commissioner determines that an interstate branch

maintained by an out-of-state state bank in this state is being operated in violation of a law of this state that is applicable to the branch under Section 24(j), Federal Deposit Insurance Act (12 U.S.C. Section 1831a(j)), including a law that governs community reinvestment, fair lending, or consumer protection, the commissioner, with written notice to the home state regulator and subject to the terms of any applicable cooperative agreement with the home state regulator, may take any enforcement action the commissioner would be empowered to take if the branch were a Texas state bank or state savings bank, as the case may be. An out-of-state state bank may appeal a final order or other decision of the commissioner under this subtitle as provided by Sections 31.202 and 31.204, or as provided under Subtitle C with respect to a state savings bank.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 22, eff. June 14, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 26, eff. June 14, 2013.
Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 30, eff. September 1, 2019.

Sec. 201.010. TAXATION. A bank subject to this subtitle is subject to the franchise tax to the extent provided by Chapter 171, Tax Code.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 201.011. SEVERABILITY. The provisions of this subtitle or the applications of those provisions are severable as provided by Section 311.032(c), Government Code.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

SUBCHAPTER B. REGISTRATION OF FINANCIAL INSTITUTIONS

Sec. 201.101. DEFINITIONS. In this subchapter:

(1) "Financial institution" means:

(A) a bank as defined for any purpose by Section 201.002(a)(4), whether chartered under the laws of this state, another state, the United States, or another country, including a state savings bank;

(B) a savings and loan association chartered under Chapter 62 or similar laws of another state;

(C) a federal savings and loan association, federal savings bank, or federal credit union;

(D) a credit union chartered under Chapter 122 or similar laws of another state; or

(E) a trust company chartered under the laws of this state or another state.

(2) "Out-of-state financial institution" means a financial institution that:

(A) is not chartered under the laws of this state; and

(B) has its main or principal office in another state or country.

(3) "Texas financial institution" means a financial institution that:

(A) is chartered under the laws of this state or under federal law; and

(B) has its main or principal office in this state.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 201.102. REGISTRATION TO DO BUSINESS. An out-of-state financial institution must file an application for registration with the secretary of state, before operating a branch or other office in this state, by complying with the law of this state relating to foreign corporations doing business in this state, notwithstanding a provision in that law that purports to limit or prohibit its applicability to financial institutions.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 201.103. APPOINTMENT OF AGENT TO RECEIVE SERVICE OF PROCESS. (a) A Texas financial institution may file in the office of the secretary of state a statement appointing an agent authorized to receive service of process.

(b) A statement appointing an agent must set forth:

(1) the name of the Texas financial institution;

(2) the federal tax identification number of the Texas financial institution;

(3) the address, including the street address, of the principal office of the Texas financial institution; and

(4) the name of the agent in this state authorized to receive service of process and the agent's address, including the street address, in this state.

(c) The agent named under Subsection (b) must be:

(1) an individual resident of this state;

(2) a domestic corporation, limited partnership, partnership, limited liability company, professional association, cooperative, or real estate investment trust; or

(3) a foreign entity registered with the secretary of state to transact business in this state.

(d) A statement appointing an agent must be signed by an officer of the Texas financial institution. The statement must also be signed by the person appointed agent, who by signing accepts the appointment. The appointed agent may resign by filing a resignation in the office of the secretary of state and giving notice to the Texas financial institution.

(e) The secretary of state shall collect for the use of the state:

(1) a fee of $25 for indexing and filing the original statement appointing an agent; and

(2) a fee of $15 for filing an amendment to or cancellation of a statement appointing an agent.

(f) An amendment to a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

(g) A statement appointing an agent may be canceled by filing with the secretary of state a written notice of cancellation executed by an officer of the Texas financial institution. A notice of cancellation must contain:

(1) the name of the Texas financial institution;

(2) the federal tax identification number of the Texas financial institution;

(3) the date of filing of the statement appointing the agent; and

(4) the current street address of the principal office of the Texas financial institution.

(h) Service of process on a registered agent appointed under this section is an alternate method of service in addition to other methods provided by law unless other law specifically requires service to be made on the registered agent. A resignation or notice of cancellation is effective immediately on acknowledgement of filing by the secretary of state, and after the acknowledgement the financial institution is subject to service of process as otherwise provided by law.

(i) The secretary of state may adopt forms and procedural rules for filing of documents under this section.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

CHAPTER 202. BANK HOLDING COMPANIES

Sec. 202.001. ACQUISITION OF BANK OR BANK HOLDING COMPANY. (a) This section applies to a company intending to acquire a Texas bank holding company or a Texas bank. For purposes of this section, a Texas bank holding company does not include a bank holding company of which the only subsidiaries are state savings banks.

(a-1) A company described by Subsection (a) shall submit to the commissioner a copy of the application for approval or notice submitted to the Board of Governors of the Federal Reserve System under Section 3, Bank Holding Company Act (12 U.S.C. Section 1842). The copy must be:

(1) submitted to the commissioner when the application is submitted to the board of governors;

(2) accompanied by any additional information required under Subsection (b); and

(3) accompanied by any filing fee required by law.

(b) An applicant or notificant that is an out-of-state bank holding company shall provide satisfactory evidence to the commissioner of compliance with or inapplicability of:

(1) the requirements of Section 202.003; and

(2) if the applicant or notificant is not incorporated under the laws of this state, the laws of this state relating to registration of foreign corporations to do business in this state.

(c) On receipt of the notice prescribed by Section 3(b), Bank Holding Company Act (12 U.S.C. Section 1842(b)), the commissioner shall state in writing within the period prescribed by that subsection the commissioner's:

(1) views and recommendations concerning the proposed transaction;

(2) opinion regarding whether the proposed transaction complies with this chapter and the Interstate Banking and Branching Efficiency Act; and

(3) opinion regarding whether the proposed transaction complies with the Community Reinvestment Act of 1977 (12 U.S.C. Section 2901 et seq.), as amended.

(d) The commissioner is not required to disapprove the application or notice solely because of the opinion stated under Subsection (c)(3).

(e) If the commissioner's response disapproves an application for or notice of an acquisition of a Texas state bank or a Texas bank holding company controlling a Texas state bank, the commissioner may:

(1) appear at the hearing held as provided by Section 3(b), Bank Holding Company Act (12 U.S.C. Section 1842(b)); and

(2) present evidence at the hearing regarding the reasons the application or notice should be denied.

(f) If the commissioner's response disapproves an application for or notice of an acquisition other than as described by Subsection (e), the commissioner may request that a hearing be held as provided by Section 3(b), Bank Holding Company Act (12 U.S.C. Section 1842(b)). If the board of governors grants the request, the commissioner shall appear and present evidence at the hearing regarding the reasons the application or notice should be denied.

(g) If the board of governors approves an application or notice that the commissioner disapproved, the commissioner may accept the decision or attempt to overturn the decision on appeal as provided by Section 9, Bank Holding Company Act (12 U.S.C. Section 1848).

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 915 (S.B. 1400), Sec. 3, eff. September 1, 2017.

Sec. 202.002. LIMITATION ON CONTROL OF DEPOSITS. (a) The commissioner may not approve an acquisition if, on consummation of the transaction, the applicant, including all depository institution affiliates of the applicant, would control 20 percent or more of the total amount of deposits in this state held by depository institutions in this state.

(b) The commissioner may request and the applicant shall provide supplemental information to the commissioner to aid in a determination under this section, including information that is more current than or in addition to information in the most recently available summary of deposits, reports of condition, or similar reports filed with or produced by state or federal authorities.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 202.003. REQUIRED AGE OF ACQUIRED BANK. (a) An out-of-state bank holding company may not make an acquisition under this chapter if the Texas bank to be acquired, or any Texas bank subsidiary of the bank holding company to be acquired, has not been in existence and in continuous operation for at least five years as of the effective date of acquisition.

(b) For purposes of this section:

(1) a bank that is the successor as a result of merger or acquisition of all or substantially all of the assets of a prior bank is considered to have been in existence and continuously operated during the period of its existence and continuous operation as a bank and during the period of existence and continuous operation of the prior bank; and

(2) a bank effecting a purchase and assumption, merger, or similar transaction with or supervised by the Federal Deposit Insurance Corporation or its successor is considered to have been in existence and continuously operated during the existence and continuous operation of the bank with respect to which the

transaction was consummated.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 202.004. NONBANKING ACQUISITION, ELECTION, OR ACTIVITY. (a) A bank holding company doing business in this state that submits an application, election, or notice to the Board of Governors of the Federal Reserve System under Section 4, Bank Holding Company Act (12 U.S.C. Section 1843), that involves or will involve an office location in this state shall submit to the commissioner a copy of the application, election, or notice when the application, election, or notice is submitted to the board of governors, including a notice or application to acquire a nonbanking institution, an election to be treated as a financial holding company, or a request, proposal, or application to engage in an activity that is or may be a financial activity or an activity incidental or complementary to a financial activity. The bank holding company shall submit other information reasonably requested by the commissioner to determine the manner in which the acquisition, election, or activity will directly or indirectly affect residents of this state.

(b) To assist in determining whether to disapprove the proposed acquisition, election, or activity, the commissioner may hold a public hearing as provided by Section 31.201, regardless of whether requested to do so by a person, regarding the proposed acquisition, election, or activity and its effect on this state. The commissioner shall convene a hearing if the bank holding company requests a hearing in writing when it submits the application, election, or notice to the commissioner.

(c) The commissioner shall disapprove the proposed acquisition, election, or activity if the commissioner determines that the acquisition, election, or activity would be detrimental to the public interest as a result of probable adverse effects, including undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

(d) If the commissioner determines to disapprove the proposed acquisition, election, or activity, the commissioner may prepare and file a response to the application, election, or notice with the board of governors and may request that a hearing be held. If the

board of governors grants the request, the commissioner shall appear and present evidence at the hearing regarding the reasons the proposed acquisition, election, or activity should be denied.

(e) If the board of governors approves a proposed acquisition, election, or activity that the commissioner disapproved, the commissioner may accept the decision or seek to overturn the decision on appeal as provided by Section 9, Bank Holding Company Act (12 U.S.C. Section 1848).

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 528, Sec. 30, eff. Sept. 1, 2001.

Sec. 202.005. APPLICABLE LAWS. (a) The commissioner may:

(1) examine a bank holding company that controls a Texas bank to the same extent as if the bank holding company were a Texas state bank; and

(2) bring an enforcement proceeding under Chapter 35 against a bank holding company or other person that violates or participates in a violation of Subtitle A, an agreement filed with the commissioner under this chapter, or a rule adopted by the finance commission or order issued by the commissioner under Subtitle A, as if the bank holding company were a Texas state bank.

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

(b) A Texas bank that is controlled by a bank holding company that is not a Texas bank holding company shall be subject to all laws of this state that are applicable to Texas banks that are controlled by Texas bank holding companies.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 94, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 77, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 183 (S.B. 1165), Sec. 17, eff. May 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 422 (H.B. 3555), Sec. 14, eff. September 1, 2015.

Sec. 202.006. FINANCIAL ACTIVITIES. (a) A financial holding company may engage in a financial activity or an activity incidental or complementary to a financial activity if the activity has been authorized by:

(1) the Board of Governors of the Federal Reserve System under 12 U.S.C. Section 1843(k); or

(2) a rule adopted by the finance commission under Subsection (b).

(b) The finance commission by rule may determine that an activity not otherwise approved or authorized under this chapter, federal law, or other law is:

(1) a financial activity;

(2) incidental to a financial activity; or

(3) complementary to a financial activity.

(c) In adopting a rule under Subsection (b), the finance commission shall consider:

(1) the purposes of this subtitle and the Gramm-Leach-Bliley Act (Pub. L. No. 106-102);

(2) changes or reasonably expected changes in the marketplace in which financial holding companies compete;

(3) changes or reasonably expected changes in the technology for delivering financial services;

(4) whether the activity is necessary or appropriate to allow a financial holding company to:

(A) compete effectively with another company seeking to provide financial services;

(B) efficiently deliver information and services that are financial in nature through the use of technological means, including an application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; or

(C) offer customers available or emerging technological

means for using financial services or for the document imaging of data; and

(5) if otherwise determined to be permissible, whether the conduct of the activity by a financial holding company should be qualified through the imposition of reasonable and necessary conditions to protect the public and require appropriate regard for safety and soundness of the holding company's subsidiary banks and the financial system generally.

(d) A determination by the board of governors under federal law or by a rule of the finance commission under this section does not alter or negate applicable licensing and regulatory requirements administered by a functional regulatory agency of this state.

Added by Acts 2001, 77th Leg., ch. 528, Sec. 31, eff. Sept. 1, 2001.

CHAPTER 203. INTERSTATE BANK MERGERS AND BRANCHING

Sec. 203.001. INTERSTATE BRANCHING BY TEXAS STATE BANKS. (a) With the prior approval of the commissioner, a Texas state bank may establish and maintain a de novo branch or acquire a branch in a state other than Texas pursuant to Section 32.203.

(b) With the prior approval of the commissioner, a Texas state bank may establish, maintain, and operate one or more branches in another state pursuant to an interstate merger transaction in which the Texas state bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant Texas state bank shall file an application on a form prescribed by the commissioner and pay the fee prescribed by law. The applicant shall also comply with the applicable provisions of Sections 32.301-32.303. The commissioner shall approve the interstate merger transaction and the operation of branches outside of this state by the Texas state bank if the commissioner makes the findings required by Section 32.302(b). An interstate merger transaction may be consummated only after the applicant has received the commissioner's written approval.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 203.002. CONDITIONS FOR ENTRY BY DE NOVO BRANCHING. (a) An out-of-state bank may establish a de novo branch in this state if:

(1) the out-of-state bank confirms in writing to the commissioner that as long as it maintains a branch in this state, it will comply with all applicable laws of this state;

(2) the applicant provides satisfactory evidence to the commissioner of compliance with the applicable requirements of Section 201.102; and

(3) the commissioner, acting on or before the 30th day after the date the commissioner receives notice of an application under Subsection (b), certifies to the responsible federal bank supervisory agency that the requirements of this subchapter have been met.

(b) An out-of-state bank desiring to establish and maintain a de novo branch shall provide written notice of the proposed transaction to the commissioner not later than the date on which the bank applies to the responsible federal bank supervisory agency for approval to establish the branch. The filing of the notice must be accompanied by the filing fee, if any, prescribed by the commissioner.

(c) A de novo branch may be established in this state through the acquisition of a branch of an existing Texas bank if the acquiring out-of-state bank complies with this section.

(d) A depository institution may not establish or maintain a branch in this state on the premises or property of an affiliate if the affiliate engages in commercial activities, except as provided by Section 92.063(d).

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 217 (H.B. 944), Sec. 4, eff. May 25, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 23, eff. June 14, 2013.

Sec. 203.003. ENTRY BY INTERSTATE MERGER TRANSACTION. (a) Subject to Section 203.004, one or more Texas banks may enter into an interstate merger transaction with one or more out-of-state banks

under this chapter, and an out-of-state bank resulting from the transaction may maintain and operate the branches in this state of a Texas bank that participated in the transaction. An out-of-state bank that will be the resulting bank in the interstate merger transaction shall comply with Section 201.102.

(b) An out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a Texas state bank shall notify the commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency, and shall submit a copy of that application to the commissioner and pay the filing fee, if any, required by the commissioner. A Texas state bank that is a party to the interstate merger transaction shall comply with Chapter 32 and with other applicable state and federal laws. An out-of-state bank that will be the resulting bank in the interstate merger transaction shall provide satisfactory evidence to the commissioner of compliance with Section 201.102.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 940, Sec. 26, eff. June 14, 2013.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 24, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 26, eff. June 14, 2013.

Sec. 203.004. LIMITATION ON CONTROL OF DEPOSITS. (a) An interstate merger transaction is not permitted if, on consummation of the transaction, the resulting bank, including all depository institution affiliates of the resulting bank, would control 20 percent or more of the total amount of deposits in this state held by all depository institutions in this state.

(b) The commissioner may request and the applicant shall provide supplemental information to the commissioner to aid in a determination under this section, including information that is more current than or in addition to information in the most recently

available summary of deposits, reports of condition, or similar reports filed with or produced by state or federal authorities.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 203.006. ADDITIONAL BRANCHES. An out-of-state bank that has established or acquired a branch in this state under this chapter may establish or acquire additional branches in this state to the same extent that a Texas state bank may establish or acquire a branch in this state under applicable state and federal law.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 203.007. EXAMINATIONS. (a) With respect to an interstate branch maintained by an out-of-state state bank in this state, the banking commissioner:

(1) with written notice to the home state regulator and subject to the terms of any applicable cooperative agreement with the home state regulator, may examine the branch for the purpose of determining whether the branch is in compliance with the laws of this state that are applicable under Section 24(j), Federal Deposit Insurance Act (12 U.S.C. Section 1831a(j)), including laws governing community reinvestment, fair lending, and consumer protection; and

(2) if expressly permitted under and subject to the terms of any cooperative agreement with the home state regulator, or if the bank has been determined to be in a troubled condition by the home state regulator or the bank's appropriate federal banking agency, may participate in the examination of the bank by the home state regulator to ascertain whether the activities of the branch in this state are being conducted in an unsafe or unsound manner.

(b) For purposes of this section, a bank is considered to be in a troubled condition if the bank:

(1) has a composite rating, as determined in the bank's most recent report of examination, of four or five under the Uniform Financial Institutions Ratings System;

(2) is subject to a proceeding initiated by the Federal Deposit Insurance Corporation for termination or suspension of

deposit insurance; or

(3) is subject to a proceeding initiated by the home state regulator to:

(A) vacate, revoke, or terminate the bank's charter;

(B) liquidate the bank; or

(C) appoint a receiver for the bank.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 940 (H.B. 1664), Sec. 25, eff. June 14, 2013.

CHAPTER 204. FOREIGN BANKS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 204.001. TRANSACTING BUSINESS. (a) A foreign bank may not transact business in this state except to the extent permitted by this chapter.

(b) Subsection (a) does not prohibit a foreign bank:

(1) from transacting business at a licensed federal branch or agency in this state in accordance with federal law;

(2) that does not maintain a branch or agency in this state or conduct business from an office or location in this state from making unsecured loans in this state or loans secured by liens on real or personal property located in this state, enforcing those loans in this state, or transacting trust business in this state, to the extent permitted by other law; or

(3) organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation, from establishing and operating an interstate branch in this state in its capacity as a state bank pursuant to Chapter 203.

(c) For purposes of Subsection (a), a foreign bank is not considered to be transacting business in this state merely because a subsidiary or affiliate transacts business in this state, including business that a depository institution subsidiary or affiliate may lawfully conduct in this state as an agent for the foreign bank to the extent authorized by the laws of this state.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1,

1999.

Sec. 204.002. BOOKS, ACCOUNTS, AND RECORDS. Each Texas state branch, agency, or representative office shall maintain and make available appropriate books, accounts, and records reflecting:

(1) all transactions effected by or on behalf of the office; and

(2) all other actions taken in this state by employees of the foreign bank located in this state to effect transactions on behalf of an office of the foreign bank located outside this state.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.003. EXAMINATION; FEES. (a) The commissioner may make examinations of a Texas state branch, agency, or representative office as the commissioner considers necessary to determine whether the office is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. Sections 31.105-31.107 apply to the examinations.

(b) A foreign bank that maintains a Texas state branch, agency, or representative office shall pay fees to the commissioner in accordance with Section 201.005 or rules adopted under this subtitle.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.004. REPORTS. (a) A foreign bank doing business in this state through a Texas state branch, agency, or representative office shall make written reports to the commissioner that:

(1) are in English;

(2) are submitted at the times and in the form specified by the commissioner or by rules adopted under this subtitle;

(3) are under oath of one of the foreign bank's officers, managers, or agents transacting business in this state;

(4) show the amount of the foreign bank's assets and liabilities, expressed in United States currency;

(5) with respect to a Texas state branch or agency, show

the amount of the branch or agency's assets and liabilities, expressed in United States currency; and

(6) contain other information that the commissioner requires.

(b) A license or registration of a foreign bank under this chapter may be revoked or the foreign bank may be subject to an enforcement action under Chapter 35 if the foreign bank fails to make a report required under Subsection (a) or makes a material false or misleading statement in the report.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.005. CHANGE OF CONTROL OF FOREIGN BANK. A foreign bank licensed to establish and maintain a Texas state branch or agency pursuant to Subchapter B, or which has registered a Texas representative office pursuant to Subchapter C, shall file with the commissioner a notice of change of control, in the form and containing the information the commissioner requires, not later than the 14th day after the date of a merger or other transaction that results or will result in a change of control.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.006. OPERATIONS IN THIS STATE OF BANKS OWNED OR CONTROLLED BY FOREIGN BANKS AND OTHER FOREIGN PERSONS. (a) Except as provided in Subsection (b):

(1) the laws of this state governing the acquisition or ownership of interests in Texas banks or out-of-state banks seeking to establish and maintain interstate branches in this state do not prohibit ownership of those institutions by, or otherwise discriminate against, foreign banks or other foreign persons; and

(2) the laws of this state governing the powers and activities of Texas banks and out-of-state banks maintaining interstate branches in this state do not discriminate among those banks on the basis of their ownership or control by foreign banks or other foreign persons.

(b) Notwithstanding Subsection (a), the commissioner may apply

the laws of this state governing the ownership, control, or operations of Texas banks, even if applicable specifically or exclusively to foreign banks or other foreign persons, to the extent those laws are determined by the commissioner to be:

(1) substantially equivalent to or consistent with the standards or requirements governing the ownership, control, or operations of Texas banks by foreign banks or other foreign persons under applicable federal law; or

(2) otherwise consistent with the laws and policies of the United States, including its international agreements governing financial services.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.007. ESTABLISHMENT OF INTERSTATE BRANCH IN THIS STATE BY AN OUT-OF-STATE FOREIGN BANK. (a) An out-of-state foreign bank may establish an interstate Texas state branch in the same manner as, and subject to the same criteria, standards, conditions, requirements, and procedures applicable to, the establishment of an interstate branch in this state by an out-of-state bank having the same home state in the United States, including by acquisition of or merger with a Texas bank, or establishment of a de novo branch in the manner provided by Section 203.002, notwithstanding another law of this state to the contrary other than Subsection (b).

(b) With respect to establishment of an initial interstate Texas state branch and subsequent intrastate branches of an out-of-state foreign bank, the commissioner:

(1) shall apply the same criteria, standards, conditions, requirements, and procedures applicable under Subchapter B to the establishment of an initial Texas state branch and subsequent intrastate branches in this state;

(2) may apply other criteria, standards, conditions, requirements, or provisions of the laws of this state that are determined by the commissioner to be substantially equivalent to or consistent with federal law generally applicable to the establishment of a branch in the United States by a foreign bank or specifically applicable to the establishment of a branch in the United States by the applicant foreign bank; and

(3) may allow an out-of-state foreign bank to:

(A) acquire or merge with another foreign bank maintaining a Texas branch or agency and after the acquisition or merger continue the operations as its own;

(B) acquire or establish an interstate Texas branch through another means not inconsistent with Section 5, International Banking Act (12 U.S.C. Section 3103); or

(C) convert a state agency to a state branch as provided by Section 204.008.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.008. CONVERSION OF EXISTING OFFICE. (a) For purposes of this section, foreign bank offices in this state are divided into classes and ranked in ascending order as:

(1) representative office;

(2) Texas state agency; and

(3) Texas state branch.

(b) A foreign bank may change a lower class office into a higher class office by applying for the higher class office pursuant to Section 204.101. On approval of the application to establish the higher class office and after all conditions to the approval have been fulfilled, the foreign bank may change the lower class office into the higher class office and the commissioner shall issue a license authorizing the bank to maintain the higher class office. The foreign bank shall promptly surrender any license or registration previously issued by the commissioner in connection with the lower class office.

(c) A foreign bank may change a higher class office into a lower class office by applying for approval to close the higher class office pursuant to Section 204.115. On approval of the application to close the higher class office and after conditions precedent to the closing have been fulfilled, the foreign bank may change the higher class office into the lower class office, and the commissioner shall issue a license or registration authorizing the bank to maintain the lower class office.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

SUBCHAPTER B. DIRECT BRANCH AND AGENCY OFFICES OF FOREIGN BANKS

Sec. 204.101. APPLICATION TO ESTABLISH BRANCH OR AGENCY. (a) A foreign bank that desires to establish and maintain a Texas state branch or agency shall submit an application to the commissioner. The application must:

(1) be accompanied by all application fees and deposits required by applicable rules;

(2) be in the form specified by the commissioner;

(3) be subscribed and acknowledged by an officer of the foreign bank;

(4) have attached:

(A) a complete copy of the foreign bank's application to the Board of Governors of the Federal Reserve System under Section 7(d), International Banking Act (12 U.S.C. Section 3105(d));

(B) an authenticated copy of the foreign bank's certificate of formation and bylaws or other constitutive documents and, if the copy is in a language other than English, an English translation of the document, under the oath of the translator; and

(C) evidence of compliance with Section 201.102;

(5) be submitted when the federal application is submitted to the board of governors; and

(6) include on its face or in accompanying documents:

(A) the name of the foreign bank;

(B) the street address where the principal office of the Texas state branch or agency is to be located and, if different, the Texas state branch or agency's mailing address;

(C) the name and qualifications of each officer and director of the foreign bank who will have control of all or part of the business and affairs of the Texas state branch or agency;

(D) a detailed statement of the foreign bank's financial condition as of a date not more than 360 days before the date of the application; and

(E) other information that:

(i) is necessary to enable the commissioner to make the findings listed in Section 204.103;

(ii) is required by rules adopted under this subtitle; or

(iii) the commissioner reasonably requests.

(b) The finance commission may adopt rules prescribing abbreviated application procedures and standards applicable to applications by foreign banks that have already established an initial Texas state branch or agency to establish additional intrastate branches or agencies.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 36, eff. June 14, 2013.

Sec. 204.102. HEARING AND DECISION ON APPLICATION. (a) After the application is complete and accepted for filing and all required fees and deposits have been paid, the commissioner shall determine from the application and the initial investigation whether the conditions set forth by Section 204.103 have been established. The commissioner shall approve the application or set the application for hearing.

(b) If the commissioner sets the application for hearing:

(1) the commissioner shall notify the Board of Governors of the Federal Reserve System that the application has been set for hearing as provided by federal regulations;

(2) the department shall participate as the opposing party; and

(3) the commissioner shall conduct the hearing and one or more prehearing conferences and opportunities for discovery as the commissioner considers advisable and consistent with applicable law.

(c) Information relating to the financial condition and business affairs of the foreign bank and financial information relating to its management and shareholders, except for previously published statements and information, is confidential and may not be considered in the public portion of the hearing or disclosed by the commissioner or an employee of the department except as provided by Subchapter D, Chapter 31.

(d) The commissioner shall make a finding from the record of the hearing on each condition listed in Section 204.103 and enter an order granting or denying the license. If the license is denied, the commissioner shall inform the Board of Governors of the Federal

Reserve System of the order and the reasons the federal application should be denied.

(e) The commissioner may make approval of an application conditional. The commissioner shall include any conditions in the order granting the license but may not issue the license until the Texas state branch or agency has received the approval of the Board of Governors of the Federal Reserve System. If the approval is conditioned on a written commitment from the applicant offered to and accepted by the commissioner, the commitment is enforceable against the applicant.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.103. ISSUANCE OF LICENSE. (a) The commissioner shall issue a license to a foreign bank to establish and maintain a Texas state branch or agency if the commissioner finds after reasonable inquiry that:

(1) all members of the management of the Texas state branch or agency have sufficient banking experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the agency will operate in compliance with state law;

(2) the foreign bank has sufficient standing to justify a belief that the Texas state branch or agency will be free from improper or unlawful influence or interference with respect to the office's operation in compliance with state law; and

(3) the foreign bank is acting in good faith and the application does not contain a material misrepresentation.

(b) Each Texas state branch or agency shall post its license in a conspicuous place at its office. A license issued under this subchapter is not transferable or assignable.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.104. NO CONCURRENT FEDERAL BRANCH OR AGENCY. (a) A foreign bank licensed under this subchapter to establish and maintain a Texas state branch or agency may not concurrently maintain a federal branch or federal agency in this state.

(b) A foreign bank which maintains a federal branch or federal agency in this state may not concurrently be licensed under this subchapter to maintain a Texas state branch or agency.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.105. POWERS OF BRANCH AND AGENCY. (a) A Texas state branch or agency is subject to this subtitle and other laws of this state applicable to banks as if the Texas state branch or agency were a Texas state bank unless:

(1) this chapter or a rule adopted under this subtitle provides otherwise; or

(2) the context of a provision or other information indicates that a provision applies only to a bank organized under the laws of a state or the United States.

(b) Among other exceptions to Subsection (a) that may be required or authorized by the commissioner provided by this subchapter or by rules adopted under this subtitle:

(1) a Texas state branch may not accept deposits of less than an amount equal to the standard maximum deposit insurance amount from citizens or residents of the United States, other than credit balances that are incidental to or arise out of its exercise of other lawful banking powers, unless the Federal Deposit Insurance Corporation determines that specific deposit taking activities in lesser amounts do not constitute domestic retail deposit activities requiring deposit insurance protection within the meaning of Section 6, International Banking Act (12 U.S.C. Section 3104);

(2) a Texas state agency may not accept deposits from citizens or residents of the United States, other than credit balances that are incidental to or arise out of its exercise of other lawful banking powers, but may accept deposits from persons who are neither citizens nor residents of the United States; and

(3) a limitation or restriction based on the capital and surplus of a Texas state bank is considered to refer, as applied to a Texas state branch or agency, to the dollar equivalent of the capital and surplus of the foreign bank, and if the foreign bank has more than one Texas state branch or agency in this state, the business transacted by all the branches and agencies must be aggregated in

determining compliance with the limitation.

(c) Subject to Subsections (a) and (b), a foreign bank licensed to transact business in this state through a Texas state branch or agency may:

(1) borrow and lend money with or without property as security;

(2) purchase, sell, and make loans regardless of whether the loans are secured by bonds or mortgages on real property;

(3) engage in a foreign exchange transaction;

(4) issue, advise, confirm, and otherwise deal with a letter of credit and pay, accept, or negotiate a draft drawn under a letter of credit;

(5) accept a bill of exchange or draft;

(6) buy or acquire and sell or dispose of a bill of exchange, draft, note, acceptance, or other obligation for the payment of money;

(7) maintain a credit balance of money received at the Texas state branch or agency incidental to or arising out of the exercise of its authorized activities in this state if the money is not intended to be a deposit and does not remain in the Texas state branch or agency after the completion of all transactions to which it relates;

(8) accept deposits to the extent permitted by Subsection (b);

(9) receive money for transmission and transmit the money from its authorized place of business in this state to any other place;

(10) act as an indenture trustee or as a registrar, paying agent, or transfer agent, on behalf of the issuer, for equity or investment securities; and

(11) perform other activities that:

(A) are authorized by rules adopted to accomplish the purposes of this subtitle; or

(B) the commissioner determines are analogous or incidental to specific activities authorized by this section for a Texas state branch or agency.

(d) A foreign bank licensed to transact business in this state through a Texas state branch or agency may share the premises of the Texas state branch or agency with another authorized office of the foreign bank or a direct or indirect subsidiary of the foreign bank

if the books and records of the Texas state branch or agency are kept separately from the books and records of the other office.

(e) For purposes of this section:

(1) "Resident of the United States" means:

(A) an individual residing in the United States;

(B) a corporation, partnership, association, or other entity organized in the United States; or

(C) a branch or office located in the United States of an entity that is not organized in the United States.

(2) "Standard maximum deposit insurance amount" means the amount of the maximum amount of deposit insurance as determined under the Federal Deposit Insurance Act (12 U.S.C. Section 1821).

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 110 (H.B. 2007), Sec. 13, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 915 (S.B. 1400), Sec. 4, eff. September 1, 2017.

Sec. 204.106. APPLICATION TO ACT AS FIDUCIARY. (a) Except as provided by Section 204.105(c)(10), a foreign bank may not act as a fiduciary at a Texas state branch or agency except by obtaining a fiduciary license as provided by this section. A foreign bank that intends to act as a fiduciary at a Texas state branch or agency shall submit an application to the commissioner. The application must:

(1) be accompanied by all application fees and deposits required by applicable rules;

(2) be in the form specified by the commissioner;

(3) be subscribed and acknowledged by an officer of the foreign bank;

(4) describe in detail:

(A) the proposed fiduciary activities;

(B) the names and relevant expertise of its officers and employees that will conduct the fiduciary activities; and

(C) the manner in which the fiduciary activities will be captured in the books and records of the Texas state branch or agency with due regard for separation of beneficial and legal

interests; and

(5) contain other information that:

(A) is necessary to enable the commissioner to make the findings required by Subsection (c);

(B) is required by rules adopted under this subtitle; or

(C) the commissioner reasonably requests.

(b) On or before the 60th day after the date the application is complete and accepted for filing and all required fees and deposits have been paid, the commissioner shall approve the application or set the application for hearing. If the commissioner sets the application for hearing, the department shall participate as the opposing party and the commissioner shall conduct the hearing and one or more prehearing conferences and opportunities for discovery as the commissioner considers advisable and consistent with applicable law.

(c) The commissioner may issue a license permitting the foreign bank to engage in fiduciary activities if the commissioner finds that the foreign bank will exercise its fiduciary powers in accordance with the laws of this state and has sufficient fiduciary and accounting expertise and controls to protect beneficial interests under its control. The commissioner may make approval of an application conditional by including conditions and limitations in the order granting the license. If the approval is conditioned on a written commitment from the applicant offered to and accepted by the commissioner, the commitment is enforceable against the applicant.

(d) A foreign bank that obtains the approval of the commissioner under this section may engage in fiduciary activities at its Texas state branch or agency to the same extent and in the same manner as a Texas state bank could do so at the same location, subject to any conditions or limitations applicable to the license.

(e) The commissioner may initiate an enforcement action under Chapter 35 or may suspend or revoke the authority of a foreign bank to engage in fiduciary activities in this state in the same manner as a revocation of license under Section 204.118 if the commissioner finds in writing that:

(1) conditions exist related to the fiduciary activities of the foreign bank in this state which would authorize the commissioner to revoke or suspend its license pursuant to Section 204.117; or

(2) a fact or condition exists which, if it had existed at the time of the foreign bank's original notice to engage in fiduciary

activities, would have resulted in the commissioner denying authority to engage in fiduciary activities.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.107. FILING OF AMENDMENTS TO CERTIFICATE OF FORMATION. If the certificate of formation of a foreign bank licensed to maintain a Texas state branch or agency is amended, the foreign bank shall promptly file with the commissioner a copy of the amendment, duly authenticated by the proper officer of the country of the foreign bank's organization. The filing does not enlarge or alter the business the foreign bank is authorized to pursue in this state, authorize the foreign bank to transact business in this state under a name other than the name set forth in its license, or extend the duration of its corporate existence.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 37, eff. June 14, 2013.

Sec. 204.108. AMENDED LICENSE FOR BRANCH OR AGENCY. (a) A foreign bank licensed to establish and maintain a Texas state branch or agency shall apply to the commissioner for an amended license if it changes its corporate name, changes the duration of its corporate existence, or desires to pursue in this state other or additional purposes than those set forth in its prior application for the foreign bank's license or amended license then in effect.

(b) The requirements with respect to the form and contents of an application under Subsection (a), the manner of its execution, the issuance of an amended license, and the effect of the amended license are the same as in the case of an initial application for a license to establish and maintain a Texas state branch or agency.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.109. RELOCATION OF OFFICE. (a) With the prior written approval of the commissioner, a foreign bank licensed to establish and maintain a Texas state branch or agency may relocate the branch or agency office. A foreign bank that intends to relocate a Texas state branch or agency office shall submit a letter to the commissioner describing the address of the proposed location, the reasons for relocation, and the manner of notifying its customers of the relocation.

(b) On or before the 30th day after the date the foreign bank's letter has been accepted for filing and any required fee has been paid, the commissioner shall approve or deny the relocation. The commissioner may not permit the foreign bank to relocate its Texas state branch or agency office if the commissioner finds that the proposed location and the manner of relocation and notification will be deceptive or that the relocation will impede or tend to impede the foreign bank's depositors and creditors in this state.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.110. SEPARATE ASSETS. (a) Each foreign bank licensed to establish and maintain a Texas state branch or agency in this state shall keep the assets of its business in this state separate and apart from the assets of its business outside this state.

(b) The depositors and creditors of a foreign bank arising out of transactions with, and recorded on the books of, its Texas state branch or agency are entitled to absolute preference and priority over the depositors and creditors of the foreign bank's offices located outside this state with respect to the assets of the foreign bank in this state.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.111. DISCLOSURE OF LACK OF DEPOSIT INSURANCE. Each foreign bank licensed to establish and maintain a Texas state branch or agency shall give notice that deposits and credit balances in the office are not insured by the Federal Deposit Insurance Corporation.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.112. LIMITATIONS ON PAYMENT OF INTEREST ON DEPOSITS. A foreign bank licensed to establish and maintain a Texas state branch or agency is subject to the same limitations with respect to the payment of interest on deposits as a state bank that is a member of the Federal Reserve System.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.113. PLEDGE OF ASSETS. (a) In accordance with rules adopted under this subtitle, a foreign bank licensed to establish and maintain a Texas state branch or agency may be required to keep on deposit, with unaffiliated banks in this state that the foreign bank designates and the commissioner approves, money and securities pledged to the commissioner in an aggregate amount to be determined by the commissioner, valued at the lower of principal amount or market value, consisting of:

(1) dollar deposits;

(2) bonds, notes, debentures, or other legally created, general obligations of a state, an agency or political subdivision of a state, the United States, or an instrumentality of the United States;

(3) securities that this state, an agency or political subdivision of this state, the United States, or an instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee;

(4) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Agricultural Mortgage Corporation, or the Federal Farm Credit Banks Funding Corporation;

(5) obligations of or issued or guaranteed by the International Bank for Reconstruction and Development, the African Development Bank, the Asian Development Bank, the InterAmerican Development Bank, or the North American Development Bank; or

(6) other assets as may be permitted by rule.

(b) The assets deposited and the amount of the assets to be maintained under Subsection (a) are subject to the conditions and limitations the commissioner considers necessary or desirable for the maintenance of a sound financial condition, the protection of depositors, creditors, and the public interest in this state, and the support of public confidence in the business of the Texas state branch or agency. The commissioner may give credit to reserves required to be maintained with a federal reserve bank in or outside this state pursuant to federal law, in accordance with rules adopted under this subtitle.

(c) While a foreign bank continues business in the ordinary course, the foreign bank may collect interest on the money and securities deposited under this section and from time to time exchange, examine, and verify the securities.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.114. ASSET MAINTENANCE. (a) In accordance with rules adopted under this subtitle, a foreign bank licensed to establish and maintain a Texas state branch or agency shall at all times satisfy the ratio of branch or agency assets to liabilities determined by the commissioner, in the commissioner's sole discretion, to be necessary or desirable with respect to the foreign bank. The type of assets to be held in this state are specified by Subsection (b) and the type of liabilities to be included in the ratio are specified by Subsection (c).

(b) Assets to be held in this state for the purpose of satisfying the ratio of assets to liabilities:

(1) include:

(A) currency, bonds, notes, debentures, drafts, bills of exchange, or other evidences of indebtedness, including loan participation agreements or certificates;

(B) other obligations payable in the United States or in United States funds or, with the prior approval of the commissioner, in funds freely convertible into United States funds; and

(C) other assets the commissioner permits or as may be

specified by rule; and

(2) exclude obligations of a person for money borrowed to the extent that the total of the obligations of the person exceeds 10 percent of total assets considered for purposes of this section.

(c) Liabilities included for purposes of calculating the ratio of assets to liabilities:

(1) include all liabilities of the foreign bank appearing in the books, accounts, or records of its Texas state branch or agency, including acceptances; and

(2) exclude amounts due and other liabilities to other offices, agencies, branches, and wholly owned subsidiaries of the foreign bank, and other liabilities the commissioner determines. The existence of a nominal number of directors' shares outstanding does not cause a subsidiary to be considered less than wholly owned.

(d) Subject to rules adopted under this subtitle, the commissioner, in the commissioner's sole discretion, may vary the ratio of assets to liabilities required by this section for a foreign bank as may be necessary or desirable to reflect differences among Texas branches or Texas agencies because of:

(1) the financial condition of Texas branch or agency offices of the foreign bank;

(2) the financial condition of branch or agency offices of the foreign bank located in other states;

(3) the general economic conditions prevalent in the home country of the foreign bank; or

(4) the financial condition of the foreign bank itself, including:

(A) the financial condition of its branches and agencies located in other countries;

(B) the financial condition of its affiliated bank and nonbank subsidiaries in the United States; and

(C) the financial condition of the foreign bank on a worldwide consolidated basis or in its home country.

(e) For purposes of this section, assets must be valued at the lower of principal amount or market value. The commissioner may determine the value of a non-marketable security, loan, or other asset or obligation held or owed to the foreign bank or its Texas state branch or agency in this state. If the commissioner cannot determine the value of an non-marketable asset, the asset must be excluded from the ratio computation.

(f) The commissioner may require a foreign bank to deposit the assets required to be held in this state pursuant to this section with specific banks in this state designated by the commissioner if, because of the existence or the potential occurrence of unusual and extraordinary circumstances, the commissioner considers it necessary or desirable for the maintenance of a sound financial condition, the protection of depositors, creditors, and the public interest in this state, and the maintenance of public confidence in the business of a Texas state branch or agency.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.115. VOLUNTARY CLOSURE OF BRANCH OR AGENCY. (a) A foreign bank licensed to establish and maintain a Texas state branch or agency may not close the office without filing an application with, and obtaining the prior approval of, the commissioner. An application by a foreign bank under this section must be in the form and include the information the commissioner requires.

(b) The commissioner shall approve the application if the commissioner finds that the closing of the office will not be substantially detrimental to the foreign bank's depositors and creditors in this state. An application may be approved subject to conditions imposed by the commissioner for the continued protection of the foreign bank's depositors and creditors in this state, including a condition that the foreign bank pledge assets in the manner specified by Section 204.113 for a specified period of time.

(c) When an application by a foreign bank under this section has been approved and all conditions precedent to the closing have been fulfilled, the foreign bank may close the office and an officer, manager, or agent of the foreign bank shall deliver to the commissioner:

(1) all copies of examination reports or other property of the department;

(2) a statement under oath by an authorized officer, manager, or agent of the foreign bank that all deposit and other liabilities of the Texas state branch or agency to depositors and creditors in this state have been properly discharged by payment or pledge or otherwise assumed or retained by a financial institution;

(3) the license issued by the commissioner;

(4) an appropriate board resolution closing the Texas state branch or agency; and

(5) a statement of the location where the records of the Texas state branch or agency will be kept after the closing.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.116. ENFORCEMENT. The commissioner may initiate an enforcement action under Chapter 35 or a proceeding to revoke the license of a Texas state branch or agency if the commissioner by examination or other credible evidence finds that the foreign bank:

(1) does not currently meet the criteria established by this chapter for the original issuance of a license;

(2) has refused to permit the commissioner to examine its books, papers, accounts, records, or affairs in accordance with Sections 204.002 and 204.003;

(3) has failed to make a report required under this chapter or made a material false or misleading statement in the report;

(4) has violated this subtitle, another law or rule applicable to a foreign bank or a Texas state branch or agency, or a final and enforceable order of the commissioner or the finance commission;

(5) has misrepresented or concealed a material fact in the original application for license;

(6) has violated a condition of its license or an agreement between the foreign bank and the commissioner or the department; or

(7) conducts business in an unsafe and unsound manner.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.117. PROCEDURE FOR REVOCATION. (a) Notice of a revocation proceeding must:

(1) be in the form of a proposed order;

(2) be served on the foreign bank by personal delivery or registered or certified mail, return receipt requested, to a director, officer, manager, or employee of the foreign bank at a

Texas state branch or agency location, or to the registered agent of the foreign bank;

(3) state the effective date of the proposed order, which may not be before the 21st day after the date the proposed order is mailed or delivered except as otherwise provided in Section 204.118; and

(4) state the grounds for the proposed revocation with reasonable certainty.

(b) Unless the foreign bank requests a hearing in writing on or before the effective date of the proposed order, the order takes effect as proposed and is final and nonappealable.

(c) A hearing requested on a proposed order shall be held not later than the 30th day after the date the written request for hearing is received by the department unless the parties agree to a later hearing date. The department shall participate as the opposing party, and the commissioner shall conduct the hearing and one or more prehearing conferences and opportunities for discovery as the commissioner considers advisable and consistent with applicable statutes and rules. The foreign bank may not accept new business during the pendency of the hearing unless the commissioner gives prior written approval, except that it shall comply with any stricter requirements imposed by Section 7(e), International Banking Act (12 U.S.C. Section 3105(e)).

(d) Information relating to the financial condition and business affairs of the foreign bank, except previously published statements and information, is confidential and may not be considered in the public portion of the hearing or disclosed by the commissioner or an employee of the department except as provided by Subchapter D, Chapter 31.

(e) Based on the record, the commissioner shall issue or refuse to issue the proposed order. An issued order may contain modifications indicated by the record to be necessary or desirable, including modifications to impose penalties available under Chapter 35 in lieu of license revocation.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.118. IMMEDIATE SUSPENSION OR REVOCATION. (a) If the

commissioner finds that any of the factors set forth in Section 204.116 are true with respect to a foreign bank licensed to maintain a Texas state branch or agency and that it is necessary for the protection of the interests of creditors of the foreign bank's business in this state or for the protection of the public interest that the commissioner immediately suspend or revoke the license of the foreign bank, the commissioner may issue, without notice and hearing, an order suspending or revoking the license of the foreign bank for a period of up to 90 days, pending investigation or hearing under Section 204.117.

(b) An order issued under this section shall be served on the foreign bank in the manner required by Section 204.117(a)(2).

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.119. STATUS OF REVOKED LICENSE. Unless stayed by the district court that has jurisdiction over an appeal, a final order of the commissioner revoking a license is effective immediately and the foreign bank shall immediately cease all activity in this state requiring a license. Subject to Section 204.120, all functions requiring a license must be immediately transferred to a branch, affiliate, or agency of the foreign bank that is located outside of this state and that has the power to perform those functions under governing law. Continued activity in this state of an unlicensed foreign bank is subject to Subchapter C, Chapter 35.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 31, eff. September 1, 2019.

Sec. 204.120. SEIZURE AND LIQUIDATION. (a) If the commissioner finds that any of the factors set forth in Section 204.116 are true with respect to a foreign bank licensed to establish and maintain a Texas state branch or agency, the commissioner may by order immediately take possession of the property and business of the foreign bank in this state if that action is necessary or desirable

for the protection of the interests of the depositors and creditors of the foreign bank's business in this state or for the protection of the public. The commissioner shall retain possession until the foreign bank resumes business in this state or is finally liquidated, except that the commissioner may permit the foreign bank to resume business in this state on conditions the commissioner requires. An order issued under this section shall be served on the foreign bank in the manner required by Section 204.117(a)(2).

(b) As soon as practicable after taking possession of the property and business of a foreign bank pursuant to Subsection (a), the commissioner shall initiate a receivership proceeding by filing a copy of the order issued under this section in a district court in Travis County to be governed by Chapter 36 as if the foreign bank were a Texas state bank, except as otherwise provided by this section. Notwithstanding the priorities established by Chapter 36, the depositors and creditors of the Texas state branch or agency, arising out of transactions with and recorded on the books of the Texas state branch or agency, have an absolute preference and priority over the creditors of the foreign bank's offices located outside this state.

(c) An action initiated that seeks to directly or indirectly affect the assets of the Texas state branch or agency is considered to be an intervention in the receivership proceeding. Venue for an action instituted to effect, contest, or otherwise intervene in the liquidation of a Texas state branch or agency is in Travis County, except that on motion filed and served concurrently with or before the filing of the answer, the court may, on a finding of good cause, transfer the action to the county of the Texas state branch or agency location.

(d) The foreign bank may contest the commissioner's actions as provided by this subsection. On or before the 10th day after the date the commissioner has taken possession of the property and business of a foreign bank pursuant to Subsection (a), the foreign bank, acting through a majority of its directors, may intervene in the action filed by the banking commissioner to challenge the commissioner's closing of the foreign bank's Texas state branch or agency and to enjoin the commissioner or other receiver from liquidating its assets. The court may issue an ex parte order restraining the commissioner or other receiver from liquidating the foreign bank's assets pending a hearing on the injunction. The

commissioner or other receiver shall comply with the restraining order but may petition the court for permission to liquidate an asset as necessary to prevent its loss or diminution pending the outcome of the injunction. The commissioner or other receiver may not be required to post bond. The court shall hear this action as quickly as possible and shall give it priority over other business. The foreign bank or the commissioner or other receiver may appeal the court's judgment as in other civil cases, except that the commissioner or other receiver shall retain all seized foreign bank assets pending a final appellate court order even if the commissioner does not prevail in the trial court. If the commissioner prevails in the trial court, liquidation of the state trust company may proceed unless the trial court or appellate court orders otherwise. If liquidation is enjoined or stayed pending appeal, the trial court retains jurisdiction to permit liquidation of an asset as necessary to prevent its loss or diminution pending the outcome of the appeal.

(e) After the commissioner or other receiver has completed the liquidation of the property and business of a foreign bank, the commissioner or other receiver shall transfer any remaining assets to the foreign bank in accordance with the court's orders, except that:

(1) if the foreign bank has an office in another state of the United States that is in liquidation and the assets of the office appear to be insufficient to pay in full the creditors of that office, the court shall order the commissioner or other receiver to transfer to the liquidator of that office the amount of the remaining assets that appears to be necessary to cover the insufficiency; or

(2) if the foreign bank has two or more such offices in liquidation and the amount of remaining assets is less than the aggregate amount of insufficiencies with respect to the offices, the court shall order the commissioner or other receiver to distribute the remaining assets among the liquidators of the offices in the manner the court finds equitable.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.121. DISSOLUTION. (a) If a foreign bank licensed to maintain a Texas state branch or agency in this state is dissolved, has its authority or existence terminated or canceled in the

jurisdiction of its incorporation, or has its authority to maintain a branch or agency in this state terminated by the Board of Governors of the Federal Reserve System under Section 7(e), International Banking Act (12 U.S.C. Section 3105(e)), an officer, manager, or agent of the foreign bank shall deliver to the commissioner:

(1) a certified copy of:

(A) a certificate of the official responsible for records of banking corporations of the foreign bank's jurisdiction of incorporation attesting to the occurrence of dissolution or of termination or cancellation of authority or existence;

(B) an order or decree of a court directing the dissolution of the foreign bank or the termination or cancellation of its authority or existence; or

(C) an order of the Board of Governors of the Federal Reserve System terminating its authority under Section 7(e), International Banking Act (12 U.S.C. Section 3105(e)); and

(2) the documents and information required by Section 204.115(c).

(b) The filing of the certificate, order, or decree has the same effect provided by Section 204.119 as if the license issued under this subchapter were revoked by the commissioner as of the effective date of termination or cancellation specified in the certificate, order, or decree unless the commissioner orders an earlier effective date, subject to the procedural protections of Section 204.117 or 204.118.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

SUBCHAPTER C. REPRESENTATIVE OFFICES OF FOREIGN BANK

Sec. 204.201. REGISTRATION OF REPRESENTATIVE OFFICE. (a) A foreign bank may establish a Texas representative office if the foreign bank files with the commissioner a verified statement of registration. A statement of registration must:

(1) be accompanied by all registration fees and deposits required by rule;

(2) be in the form specified by the commissioner;

(3) be subscribed and acknowledged by an officer of the foreign bank;

(4) contain as an exhibit or attachment:

(A) a copy of the foreign bank's notice or application submitted to the Board of Governors of the Federal Reserve System under Section 10, International Banking Act (12 U.S.C. Section 3107), and, when issued, the order or notification from the board of governors indicating that the representative office has been approved;

(B) an authenticated copy of the foreign bank's certificate of formation and bylaws or other constitutive documents and, if the copy is in a language other than English, an English translation of the document, under the oath of the translator; and

(C) evidence of compliance with Section 201.102;

(5) be submitted when the federal notice or application is submitted to the board of governors; and

(6) directly or in exhibits or attachments contain:

(A) the name of the foreign bank;

(B) the street address and post office address where each Texas representative office is to be located in this state;

(C) the name and qualifications of each officer and director of the foreign bank who will have charge of any aspect of the business and affairs of the Texas representative office;

(D) a complete and detailed statement of the financial condition of the foreign bank as of a date not more than 360 days before the date of the filing; and

(E) other information the commissioner requires.

(b) The finance commission may adopt rules prescribing abbreviated registration procedures and standards for foreign banks that have already established an initial Texas representative office to establish additional Texas representative offices.

(c) A foreign bank that maintains a Texas state or federal branch or agency in this state is not prohibited from establishing or maintaining one or more Texas representative offices.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 38, eff. June 14, 2013.

Sec. 204.202. PLACE OF BUSINESS. A Texas representative office may engage in the business authorized by this subchapter at each place of business registered with the commissioner. A Texas representative office may change its location in this state by filing a notice with the commissioner containing the street address and post office address of the new location.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.203. PERMISSIBLE ACTIVITIES OF REPRESENTATIVE OFFICE. (a) A registered Texas representative office of a foreign bank may engage in:

(1) representational and administrative functions in connection with the banking activities of the foreign bank that:

(A) may include soliciting new business for the foreign bank, conducting research, acting as liaison between the foreign bank's head office and customers in the United States, performing preliminary and servicing steps in connection with lending, or performing back-office functions; and

(B) do not include contracting for any deposit or deposit-like liability, lending money, or engaging in any other banking activity for the foreign bank;

(2) making credit decisions if:

(A) the foreign bank also operates one or more branches or agencies in the United States;

(B) the loans approved at the representative office are made by a United States office of the bank; and

(C) the loan proceeds are not disbursed in the representative office; and

(3) other functions for or on behalf of the foreign bank or its affiliates, including operating as a regional administrative office of the foreign bank, but only to the extent that the functions are not banking activities and are not prohibited by applicable federal or state law.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 915 (S.B. 1400), Sec. 6, eff. September 1, 2017.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 915 (S.B. 1400), Sec. 6, eff. September 1, 2017.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 915 (S.B. 1400), Sec. 6, eff. September 1, 2017.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 915 (S.B. 1400), Sec. 5, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 915 (S.B. 1400), Sec. 6, eff. September 1, 2017.

Sec. 204.204. ENFORCEMENT. The commissioner may initiate an enforcement action under Chapter 35 or a proceeding to revoke the registration of a representative office if the commissioner by examination or other credible evidence finds that the foreign bank:

(1) has refused to permit the commissioner to examine the books, papers, accounts, records, or affairs of a Texas representative office in accordance with Sections 204.002 and 204.003;

(2) has violated this subtitle, another law or rule applicable to a foreign bank or a Texas representative office, or a final and enforceable order of the commissioner or the finance commission;

(3) has misrepresented or concealed a material fact in the original registration;

(4) has violated a condition of an agreement between the foreign bank and the commissioner, a bank supervisory agency, or another state regulatory agency; or

(5) conducts business in an unsafe and unsound manner.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.205. PROCEDURE FOR REVOCATION. (a) Notice of a revocation proceeding must:

(1) be in the form of a proposed order;

(2) be served on the foreign bank by personal delivery or registered or certified mail, return receipt requested, to a director, officer, or employee of the foreign bank at a Texas

representative office location, or to the registered agent of the foreign bank;

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

(4) state the grounds for the proposed revocation with reasonable certainty.

(b) Unless the foreign bank requests a hearing in writing on or before the effective date of the proposed order, the order takes effect as proposed and is final and nonappealable.

(c) A hearing requested on a proposed order shall be held not later than the 30th day after the date the written request for hearing is received by the commissioner unless the parties agree to a later hearing date. The department shall participate as the opposing party, and the commissioner shall conduct the hearing and one or more prehearing conferences and opportunities for discovery as the commissioner considers advisable and consistent with applicable statutes and rules. During the pendency of the hearing and unless the commissioner gives prior written approval, the foreign bank may not accept new business from this state.

(d) Information relating to the financial condition and business affairs of the foreign bank, except previously published statements and information, is confidential and may not be considered in the public portion of the hearing or disclosed by the commissioner or an employee of the department except as provided by Subchapter D, Chapter 31.

(e) Based on the record, the commissioner shall issue or refuse to issue the proposed order. An issued order may contain modifications indicated by the record to be necessary or desirable, including modifications to impose penalties available under Chapter 35 in lieu of revocation of registration.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.206. EFFECT OF REVOKED REGISTRATION. A foreign bank that has had its registration under this subchapter revoked shall cease all activities in this state. Continued activity in this state of an unregistered foreign bank is subject to Subchapter C, Chapter

35.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

Sec. 204.207. DISSOLUTION. (a) If a foreign bank with a registered Texas representative office is dissolved, has its authority or existence terminated or canceled in the jurisdiction of its incorporation, or has its authority to maintain its Texas representative office terminated by the Board of Governors of the Federal Reserve System under Section 10(b), International Banking Act (12 U.S.C. Section 3107(b)), an officer, manager, or agent of the foreign bank shall deliver to the commissioner a certified copy of:

(1) a certificate of the official responsible for records of banking corporations of the foreign bank's jurisdiction of incorporation attesting to the occurrence of dissolution or of termination or cancellation of authority or existence;

(2) an order or decree of a court directing the dissolution of the foreign bank or the termination or cancellation of its authority or existence; or

(3) an order of the Board of Governors of the Federal Reserve System terminating its authority under Section 10(b), International Banking Act (12 U.S.C. Section 3107(b)).

(b) The filing of the certificate, order, or decree has the same effect under Section 204.206 as if the registration made under this subchapter were revoked by the commissioner.

Added by Acts 1999, 76th Leg., ch. 344, Sec. 1.001, eff. Sept. 1, 1999.

SUBTITLE Z. MISCELLANEOUS PROVISIONS RELATING TO FINANCIAL INSTITUTIONS AND BUSINESSES

CHAPTER 271. FINANCIAL TRANSACTION REPORTING REQUIREMENTS

Sec. 271.001. REPORTING REQUIREMENT FOR CRIMES AND SUSPECTED CRIMES AND CURRENCY AND FOREIGN TRANSACTIONS. (a) A financial institution that is required to file a report with respect to a transaction in this state under the Currency and Foreign Transactions Reporting Act (31 U.S.C. Section 5311 et seq.), 31 C.F.R. Part 103, or 12 C.F.R. Section 21.11, and their subsequent amendments, shall

file a copy of the report with the attorney general.

(b) A financial institution that timely files the report described by Subsection (a) with the appropriate federal agency as required by federal law complies with that subsection unless the attorney general:

(1) notifies the financial institution that the report is not of a type that is regularly and comprehensively transmitted by the federal agency to the attorney general following the attorney general's request to that agency;

(2) requests that the financial institution provide the attorney general with a copy of the report; and

(3) reimburses the financial institution for the actual cost of duplicating and delivering the report or 25 cents for each page, whichever is less.

(c) In this section, "financial institution" has the meaning assigned by 31 U.S.C. Section 5312 and its subsequent amendments.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.028, eff. Sept. 1, 1999.

Sec. 271.002. REPORTING REQUIREMENT FOR CASH RECEIPTS OF MORE THAN $10,000. (a) A person engaged in a trade or business who, in the course of the trade or business, receives more than $10,000 in one transaction or in two or more related transactions in this state and who is required to file a return under Section 6050I, Internal Revenue Code of 1986 (26 U.S.C. Section 6050I), or 26 C.F.R. Section 1.6050I-1, and their subsequent amendments, shall file a copy of the return with the attorney general.

(b) A person who timely files the return described by Subsection (a) with the appropriate federal agency as required by federal law complies with that subsection unless the attorney general:

(1) notifies the person that the return is not of a type that is regularly and comprehensively transmitted by the federal agency to the attorney general; and

(2) requests that the person provide the attorney general with a copy of the return.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.029, eff. Sept. 1, 1999.

Sec. 271.003. USE OF REPORTED INFORMATION. The attorney general may report a possible violation indicated by analysis of a report or return described by this chapter or information obtained under this chapter to an appropriate law enforcement agency for use in the proper discharge of the agency's official duties.

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

Sec. 271.004. FAILURE TO COMPLY WITH REPORTING REQUIREMENTS; CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) is requested by the attorney general to submit information required by Section 271.001 or 271.002 to the attorney general; and

(2) knowingly fails to provide the requested information to the attorney general before the 30th day after the date of the request.

(b) An offense under this section is a Class A misdemeanor.

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

Sec. 271.005. SUPPRESSION OF PHYSICAL EVIDENCE; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly suppresses physical evidence connected with information contained in a report or return required by this chapter through concealment, alteration, or destruction.

(b) An offense under this section is a Class A misdemeanor.

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

Sec. 271.006. NOTIFICATION TO TARGET OF CRIMINAL INVESTIGATION; CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) is required to submit a report or return under this chapter; and

(2) knowingly notifies an individual who is the target of a criminal investigation involving an offense under Chapter 34, Penal Code, that:

(A) the attorney general has requested the person to provide information required by this chapter related to the targeted individual; or

(B) the individual may be subject to impending criminal prosecution.

(b) An offense under this section is a Class A misdemeanor.

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

CHAPTER 273. SAVINGS AND LOAN SUPPLEMENTAL FUND ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 273.001. SHORT TITLE. This chapter may be cited as the Texas Savings and Loan Supplemental Fund Act.

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

Sec. 273.002. PURPOSES; LIBERAL CONSTRUCTION. (a) The purposes of this chapter are to:

(1) establish a fund in this state to aid the commissioner in maintaining the solvency of associations that contribute to the fund; and

(2) safeguard the public interest and promote public confidence in domestic associations doing business in this state by making the fund available to the commissioner to be used to:

(A) protect and rehabilitate the assets of member associations; and

(B) maintain the solvency of member associations.

(b) This chapter shall be liberally construed to effect its purposes.

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

Sec. 273.003. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the corporation.

(2) "Commissioner" means the savings and mortgage lending commissioner.

(3) "Corporation" means the Texas Savings and Loan

Supplemental Fund Corporation.

(4) "Domestic association" means a savings and loan association that is organized under the laws of this state.

(5) "Member association" means a domestic association that is a member in good standing of the corporation.

(6) "Member association under conservatorship" means a member association that is subject to a conservatorship order of the commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.059, eff. September 1, 2007.

Text of section effective until January 1, 2022

Sec. 273.004. EXEMPTION FROM SECURITIES ACT. (a) A security issued by the corporation under this chapter is not considered a "security" under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

(b) A person authorized by and acting on behalf of the corporation is exempt from the registration and licensing provisions of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) with respect to that person's participation in a sale or other transaction involving a security of the corporation.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.16, eff. January 1, 2022.

Text of section effective on January 1, 2022

Sec. 273.004. EXEMPTION FROM SECURITIES ACT. (a) A security issued by the corporation under this chapter is not considered a "security" under The Securities Act (Title 12, Government Code).

(b) A person authorized by and acting on behalf of the corporation is exempt from the registration and licensing provisions of The Securities Act (Title 12, Government Code) with respect to that person's participation in a sale or other transaction involving

a security of the corporation.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.16, eff. January 1, 2022.

Sec. 273.005. SECURITY OF CORPORATION CONSIDERED AUTHORIZED INVESTMENT OF SAVINGS AND LOAN ASSOCIATION. A security of the corporation held by a member association is considered an authorized investment of a savings and loan association under state law.

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

SUBCHAPTER B. ORGANIZATION OF CORPORATION

Sec. 273.101. CREATION OF AND MEMBERSHIP IN CORPORATION. (a) The Texas Savings and Loan Supplemental Fund Corporation is a nonprofit legal entity that is supervised by the commissioner.

(b) A domestic association is eligible to be a member of the corporation if the association:

(1) is insured by the Federal Deposit Insurance Corporation; and

(2) meets the membership standards adopted by the board and approved by the commissioner as part of the Texas Savings and Loan Supplemental Fund Corporation's plan of operation.

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

Sec. 273.102. BOARD OF DIRECTORS. (a) The board shall exercise the powers and manage the business and affairs of the corporation.

(b) The board consists of:

(1) the members of the Finance Commission of Texas; and

(2) six members elected by the member associations at an annual meeting.

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

Sec. 273.103. EXECUTIVE COMMITTEE. (a) The plan of operation of the corporation may authorize the board to create an executive committee consisting of three or more directors.

(b) An act of the executive committee is as effective as an act of the board if the act is authorized by the plan of operation and is within the authority delegated to the committee.

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

Sec. 273.104. TERM. (a) An elected director serves a two-year term and continues to serve until a successor has been elected and qualified.

(b) Of the original board who represent the member associations, three directors shall be elected for two-year terms, and the other three directors shall be elected for one-year terms.

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

Sec. 273.105. BOARD OFFICERS AND PERSONNEL. (a) At the first board meeting after each directors' election, the board shall elect from its membership a presiding officer.

(b) The board may appoint other officers and employees as the board considers appropriate.

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

Sec. 273.106. VACANCY. (a) The office of a director becomes vacant on the death, resignation, or removal of the director.

(b) A resignation must be presented to the commissioner or the board's presiding officer.

(c) A vacancy in the office of a director shall be filled for the unexpired term by majority vote of the remaining directors.

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

Sec. 273.107. REMOVAL OF BOARD MEMBER. The board may remove an elected director from office by a two-thirds majority vote at a

meeting called for that express purpose because the director has failed to:

(1) maintain the standards for directors specified in the plan of operation; or

(2) perform any required duty.

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

Sec. 273.108. CONFLICT OF INTEREST. A director may not vote or act on a decision intended to directly and specifically affect an association in which the director has a direct interest.

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

Sec. 273.109. COMPENSATION; REIMBURSEMENT FOR EXPENSES. A director may not receive compensation for serving on the board but is entitled to reimbursement for actual expenses incurred in performing duties as a director.

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

Sec. 273.110. MEETINGS. (a) A regular meeting of the board shall be held as determined by the board.

(b) A special meeting of the board may be called by:

(1) the presiding officer;

(2) any three directors; or

(3) the commissioner.

(c) Notice of the time and place of each board meeting shall be given to each director and the commissioner at the time and in the manner specified in the plan of operation.

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

Sec. 273.111. QUORUM; VOTING. (a) A quorum of the board consists of not less than a majority of all directors, except that:

(1) less than a majority of all directors may adjourn from time to time; and

(2) a majority of directors holding office constitutes a quorum for filling a vacancy on the board.

(b) Each member association is entitled to one vote on a matter at a meeting of the member associations, including the election of directors. The vote must be cast by a delegate authorized to act by that association.

(c) A majority of the votes cast is required to elect a director or approve a question to be voted on by the directors.

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

SUBCHAPTER C. OPERATION OF CORPORATION

Sec. 273.201. PLAN OF OPERATION; AMENDMENT. (a) After the directors have been selected and taken office, the board shall submit to the commissioner a plan of operation the board finds necessary and suitable to assure the fair, reasonable, and equitable administration of the corporation. The plan must:

(1) contain explicit standards for admission to and retention of membership in the corporation;

(2) establish procedures for handling the assets of the corporation;

(3) establish the amount and method of reimbursing directors;

(4) establish a regular place and time for board meetings;

(5) establish procedures for keeping records of financial transactions of the board, the corporation, and the corporation's agents;

(6) establish additional procedures for issuing securities of the corporation under Subchapter D;

(7) subject to the limits prescribed by Section 273.305(c), establish a maximum amount that may be spent on behalf of a member association for the purposes of this chapter; and

(8) contain any other provision necessary or proper to execute the powers and duties of the corporation.

(b) A member association shall comply with the plan.

(c) The corporation may amend the plan and submit the amendment to the commissioner.

(d) The plan or an amendment to the plan takes effect on the commissioner's written approval of the plan or amendment.

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

Sec. 273.202. TEMPORARY PLAN OF OPERATION. (a) The commissioner shall prepare and adopt a temporary plan of operation for organization of the corporation until the initial board is selected. The plan must include standards for membership in the corporation.

(b) The temporary plan remains in effect until the plan is:

(1) modified by the commissioner; or

(2) superseded by a plan of operation that is approved by the commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.203. POWERS OF CORPORATION. The corporation may, consistent with the purposes of this chapter, exercise the powers of a nonprofit corporation created under the laws of this state, including the power to:

(1) enter into a contract;

(2) sue and be sued;

(3) purchase, hold, lease, receive, use, encumber, transfer, lend, advance, or otherwise dispose of money or other property of any kind, or of any interest in money or other property;

(4) take the capital stock and assets of a borrowing member association as collateral securing any loan it makes to that association;

(5) hold or dispose of in any manner any collateral described by Subdivision (4) acquired as a result of default in the payment of a loan;

(6) declare and pay a dividend or interest on a security issued under this chapter;

(7) borrow money; and

(8) perform any other necessary act to enable the corporation to effectively promote and carry out its purposes.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.204. CONDITIONS UNDER WHICH CORPORATION MAY EXERCISE

POWERS AND DUTIES. The corporation may not exercise a power or perform a duty under Section 273.203 or 273.205 or Subchapter E until the Office of Thrift Supervision and the Federal Deposit Insurance Corporation have:

(1) officially recognized that the corporation in exercising that power or performing that duty will reduce and minimize the liability of the Federal Deposit Insurance Corporation; and

(2) taken any necessary action to permit member associations to use without restraint all of the operational power the member associations have under the laws of this state, including rules of the Finance Commission of Texas.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 95, eff. Sept. 1, 2001.

Sec. 273.205. CONSIDERATION FOR ASSISTANCE. In consideration for assistance provided to a member association under this chapter, the corporation shall receive:

(1) an equity interest in the association; or

(2) other compensation acceptable to the board from the association or another corporate entity that is a party to the transaction in which the assistance is rendered.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.206. CANCELLATION OF MEMBERSHIP. The board may cancel the membership of a member association that fails to purchase securities as required by Section 273.301 by the 10th banking day after the purchase date set by the board.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.207. REDEMPTION OF SECURITIES. (a) A member association that surrenders its membership, becomes ineligible for membership, or has its membership canceled may present any security of the corporation it holds for redemption. The corporation may defer redemption for not longer than three years and shall continue

to pay interest or a dividend required under the terms of a security until the security is redeemed.

(b) When the balance of the administrative account exceeds 20 percent of the balance of the primary account, the corporation may begin a redemption plan of securities issued by the corporation.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.208. IMMUNITY FROM LIABILITY. The following persons are not liable for an act or failure to act in the exercise of the person's powers or performance of the person's duties under this chapter:

(1) a member association;

(2) the corporation;

(3) a director;

(4) the commissioner or the commissioner's representative; and

(5) an agent or employee of the corporation or a member association.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.209. LIMITATION ON ADVERTISEMENT AND PROMOTION. A member association may advertise or use for promotional purposes the fact that its assets are protected under this chapter only to the extent and in the manner permitted by the plan of operation.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.210. DISSOLUTION. (a) The corporation may be dissolved on:

(1) approval of the commissioner;

(2) unanimous approval of the board; and

(3) approval of two-thirds of the member associations.

(b) The corporation may be dissolved if member associations are required to contribute to any fund similar to the corporation's primary account, other than a fund in which member associations pay premiums to the Federal Deposit Insurance Corporation for insurance

of accounts.

(c) The commissioner and the board shall establish procedures for dissolution.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.211. EFFECT OF DISSOLUTION. (a) On dissolution, money in the primary account shall be used to redeem all securities issued by the corporation and held by a member association. If money in the primary account is insufficient to redeem the securities, the administrative account may be used.

(b) On dissolution, the earnings of the corporation accrue to this state and may not be distributed to any other person.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER D. PRIMARY AND ADMINISTRATIVE ACCOUNTS; ISSUANCE OF SECURITIES

Sec. 273.301. REQUIRED PURCHASE OF SECURITIES. (a) The corporation, acting on the direction of the board under the plan of operation, may require a member association to purchase by a certain date preferred stock, a certificate of participation, or another type of security issued by the corporation that accrues interest or pays a dividend at a specified rate or a variable rate determined by a specific method of computation.

(b) The commissioner may defer in whole or in part a purchase required by Subsection (a) if the commissioner believes the purchase would endanger the ability of the member association to maintain its solvency.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.302. AMOUNT OF SECURITY PURCHASE. The aggregate amount of securities of any type a member association may be required to purchase under Section 273.301 may not exceed an amount equal to two percent of the total assets of the association as shown on the association's annual statement filed with the commissioner as required by law for the calendar year preceding the date of the

required purchase.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.303. PRIMARY ACCOUNT. (a) Money from the sale of the corporation's securities constitutes the primary account of the corporation.

(b) Money in the primary account may be invested in:

(1) a certificate of deposit or other interest-bearing account in a savings and loan association or commercial bank domiciled in this state; or

(2) securities that:

(A) will mature in not longer than five years;

(B) are issued by the United States government, this state, or a municipality or other governmental entity of this state; and

(C) are direct obligations of or secured by the full faith and credit of the issuer.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.304. ADMINISTRATIVE ACCOUNT. The corporation shall establish an administrative account in which the corporation shall deposit earnings, including interest, on the investment of money in the primary account.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.305. AUTHORIZED EXPENDITURES. (a) The corporation may spend money from the administrative account for the usual business operations of the corporation.

(b) On the commissioner's request, the corporation shall use money in the administrative account or primary account to:

(1) aid a member association under conservatorship; and

(2) rehabilitate a member association placed under conservatorship as authorized by law and minimize the chance the association will be liquidated.

(c) The total amount used to aid a member association under

Subsection (b)(1) may not exceed the lesser of:

(1) 10 percent of the balance of the primary account; or

(2) 20 percent of the association's assets.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.306. FORM AND TERMS OF SECURITY ISSUE. The board shall determine the form and terms of, and any other matter not covered by this chapter relating to, each security issue under this subchapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.307. ALLOCATION OF SECURITY ISSUE. The corporation shall allocate each security issue under Section 273.301 ratably among the member associations based on the ratio of each association's total assets on December 31 of the year preceding the date on which the securities are purchased to the total assets of all member associations on that date.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.308. LIMITATION ON ISSUANCE OF SECURITIES. When the balance of the administrative account reaches the greater of $50 million or five percent of the balance of the primary account, the corporation shall stop issuing securities until the balance of the administrative account is less than $50 million or five percent of the balance of the primary account, as appropriate.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER E. ASSISTANCE PROVIDED TO MEMBER ASSOCIATIONS UNDER CONSERVATORSHIP

Sec. 273.401. GENERAL ASSISTANCE. On the commissioner's request and under the commissioner's instruction, the corporation shall assist in the merger, consolidation, conservation, rehabilitation, or supervision of a member association under

conservatorship.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.402. ASSISTANCE IN TRANSFERRING OR DISPOSING OF PROPERTY. The corporation shall make or issue to the appropriate person, with the commissioner's approval, a guaranty or other form of written assurance that is reasonably necessary to facilitate the transfer or other disposition of all or part of the property of a member association under conservatorship.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.403. ADVANCE OF MONEY. (a) The corporation shall advance money on terms the board may establish to directly aid or to provide special services for a member association under conservatorship so the association may continue to operate and maintain solvency.

(b) The corporation may charge interest on the money it advances under this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.404. PURCHASE OF INTEREST IN ASSETS. (a) The corporation shall purchase from a member association under conservatorship an interest in the association's assets at a price agreed to by the conservator and the board, regardless of whether the price exceeds the market value of the purchased assets.

(b) A purchase must be made on the terms the board determines. The commissioner must approve the terms of the purchase in writing.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.405. PROCEDURE FOR MERGER, SALE OF CONTROL OF, OR SALE OF ASSETS. A merger, sale of control, or sale of any of the assets of a member association under conservatorship in aid of which money from an account under this chapter has been advanced may be

accomplished in the form and by the procedure the board and the commissioner consider appropriate.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER F. ADMINISTRATIVE PROVISIONS

Sec. 273.501. ANNUAL FINANCIAL STATEMENT. (a) Not later than April 1 of each year, the board shall submit to the commissioner an audited financial statement for the preceding calendar year, prepared in accordance with consistently applied generally accepted accounting principles.

(b) An independent certified public accountant must certify the financial statement.

(c) The commissioner may require additional necessary information.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.502. EFFECT OF MEMBERSHIP. In regulating a savings and loan association, the commissioner may not give preferential treatment to or discriminate against that association solely because that association is or is not a member of the corporation.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.503. AMOUNT TO BE SPENT BEFORE CERTIFICATION OF INSOLVENCY OF MEMBER ASSOCIATION. The commissioner must spend the amount prescribed by Section 273.201(a)(7) before certifying a member association to be insolvent.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 273.504. FEE AND TAX EXEMPTION. The corporation is exempt from fees and taxes imposed by this state or a political subdivision of this state, except a tax imposed on real property.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 274. SUBSTITUTE OR SUCCESSOR FIDUCIARY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 274.001. DEFINITIONS. In this chapter:

(1) "Bank" has the meaning assigned by Section 31.002(a)(2), excluding a bank that does not have its main office or a branch located in this state.

(2) "Bank holding company" has the meaning assigned by Section 2(a), Bank Holding Company Act of 1956 (12 U.S.C. Section 1841(a)), as amended.

(3) "Commissioner" means the banking commissioner of Texas.

(4) "Fiduciary" means an entity responsible for managing a fiduciary account.

(5) "Fiduciary account" means an account with a situs of administration in this state involving the exercise of a corporate purpose specified by Section 182.001(b).

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.51, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 344, Sec. 2.030, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 78, eff. September 1, 2007.

Sec. 274.002. AFFILIATED BANK. A bank is affiliated with a subsidiary trust company if more than 50 percent of the bank's voting stock is directly or indirectly owned by a bank holding company that owns more than 50 percent of the voting stock of the subsidiary trust company.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.030, eff. Sept. 1, 1999.

Sec. 274.003. SUBSIDIARY TRUST COMPANY. An entity is a subsidiary trust company of a bank holding company if:

(1) the entity is a:

(A) trust company organized under Subchapter A, Chapter 182; or

(B) bank that is organized to conduct a trust business and any incidental business or to exercise trust powers; and

(2) more than 50 percent of the voting stock of the entity is directly or indirectly owned by the bank holding company.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.52, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 344, Sec. 2.030, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 79, eff. September 1, 2007.

SUBCHAPTER B. SUBSIDIARY TRUST COMPANIES AS SUBSTITUTE OR SUCCESSOR FIDUCIARIES

Sec. 274.101. AGREEMENT TO SUBSTITUTE FIDUCIARIES. (a) A subsidiary trust company may enter into an agreement with an affiliated bank of the company to substitute the company as fiduciary for the bank in each fiduciary account listed in the agreement, provided the situs of account administration is not moved outside of this state without the express written consent of all persons entitled to notice under Sections 274.103(a) and (c).

(b) The agreement must include:

(1) a list of each fiduciary account for which substitution is requested;

(2) a statement of whether the substitution will cause a change in the situs of administration of each fiduciary account; and

(3) the effective date of the substitution, which may not be before the 91st day after the date of the agreement.

(c) The agreement must be filed with the commissioner before the date the substitution takes effect.

(d) A fiduciary account may be removed from the operation of the agreement by the filing of an amendment to the agreement with the commissioner before the effective date stated in the agreement.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.031, eff. Sept. 1, 1999.

Sec. 274.102. SITUS OF ACCOUNT ADMINISTRATION. The situs of administration of a fiduciary account is the county in this state in

which the fiduciary maintains the office that is primarily responsible for dealing with the parties involved in the account.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.032, eff. Sept. 1, 1999.

Sec. 274.103. NOTICE OF SUBSTITUTION. (a) Not later than the 91st day before the effective date of a substitution under Section 274.101, the parties to the substitution agreement shall send notice of the substitution to:

(1) any other fiduciary;

(2) each surviving settlor of a trust relating to the fiduciary account;

(3) each issuer of a security for which the affiliated bank administers the fiduciary account;

(4) the plan sponsor of each employee benefit plan relating to the fiduciary account;

(5) the principal of each agency account; and

(6) the guardian of the person of each ward that has the fiduciary account resulting from a guardianship.

(b) If the substitution does not cause a change in the situs of administration of a fiduciary account, the parties to the substitution agreement shall also send notice of the substitution to each person who is readily ascertainable as a beneficiary of the account because the person has received account statements or because a parent, conservator, or guardian of a minor beneficiary has received account statements on the minor's behalf.

(c) If the substitution causes a change in the situs of administration of a fiduciary account, the parties to the substitution agreement shall also send notice of the substitution to:

(1) each adult beneficiary of a trust relating to the account;

(2) each parent, conservator, or guardian of a minor beneficiary receiving or entitled to receive current distributions of income or principal from the account; and

(3) each person who individually or jointly has the power to remove the fiduciary being substituted.

(d) The notice must be sent by United States mail to the person's current address as shown on the fiduciary's records. The

fiduciary shall make a reasonable attempt to ascertain the address of a person who does not have an address shown on the fiduciary's records.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.104. FORM OF NOTICE OF SUBSTITUTION. The notice required under Section 274.103 must be in writing and disclose:

(1) the effect the substitution of fiduciary will have on the situs of administration of the fiduciary account;

(2) the person's rights with respect to objecting to the substitution; and

(3) the liability of the existing fiduciary and the substitute fiduciary for their actions.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.105. FAILURE TO SEND NOTICE OF SUBSTITUTION; DEFECTIVE NOTICE. (a) If the parties to a substitution agreement under Section 274.101 intentionally fail to send the required notice under Section 274.103, the substitution of the fiduciary is ineffective.

(b) If the parties unintentionally fail to send the required notice, the substitution of the fiduciary is not impaired.

(c) If a substitution of a fiduciary is ineffective because of a defect in the required notice, any action taken by a subsidiary trust company before the substitution is determined to be ineffective is valid if the action would have been valid if performed by the affiliated bank.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.106. EFFECTIVE DATE OF SUBSTITUTION OF FIDUCIARIES. (a) The substitution takes effect on the effective date stated in the substitution agreement unless, not later than the 16th day before the effective date:

(1) each party entitled to receive notice of the substitution under Sections 274.103(a) and (c) provides the

affiliated bank with a written objection to the substitution; or

(2) a party entitled to receive notice of the substitution under Section 274.103 files a written petition in a court seeking to have the substitution denied under Section 274.107 and provides the affiliated bank with a copy of the petition.

(b) A substitution that is objected to under Subsection (a)(1) takes effect when:

(1) one of the parties objecting to the substitution removes the party's objection in writing; or

(2) the bank obtains a final court order approving the substitution.

(c) A substitution that is objected to under Subsection (a)(2) takes effect when:

(1) the petition is withdrawn or dismissed; or

(2) the court enters a final order denying the relief sought.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.107. HEARING ON AGREEMENT TO SUBSTITUTE FIDUCIARIES. (a) A court may deny the substitution if the court, after notice and hearing, determines:

(1) if the substitution will not cause a change in the situs of administration of a fiduciary account, that the substitution is materially detrimental to the account or to its beneficiaries; or

(2) if the substitution will cause a change in the situs of administration of a fiduciary account, that the substitution is not in the best interests of the account or its beneficiaries.

(b) The court shall allow a substitution that will cause the situs of administration of a fiduciary account to change if the court, after notice and hearing, determines that the substitution is in the best interests of the account and its beneficiaries.

(c) In a proceeding under this section, the court may award costs and reasonable and necessary attorney's fees as the court considers equitable and just.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.108. SUBSIDIARY TRUST COMPANY AS SUBSTITUTE FIDUCIARY.

On the effective date of the substitution as prescribed by Section 274.106, the subsidiary trust company:

(1) without the necessity of an instrument of transfer or conveyance, succeeds to all interest in property the affiliated bank holds for the fiduciary account being substituted; and

(2) without the necessity of judicial action or action by the creator of the fiduciary account, becomes fiduciary of the account and shall perform the duties and exercise the powers of a fiduciary in the same manner as if the company had originally been designated fiduciary.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.109. NOTICE OF CHANGE IN SITUS OF ADMINISTRATION OF FIDUCIARY ACCOUNT FOLLOWING SUBSTITUTION. (a) If the fiduciary of a fiduciary account has changed as a result of a substitution agreement under Section 274.101, the substitute fiduciary shall send notice of a change in the situs of administration of the account after the substitution to each person entitled to notice under Sections 274.103(a) and (c) not later than the 91st day before the effective date of the change.

(b) The notice must be sent by United States mail to the person's current address as shown on the fiduciary's records. The fiduciary shall make a reasonable attempt to ascertain the address of a person who does not have an address shown on the fiduciary's records.

(c) The notice must disclose:

(1) the effect that the change will have on the situs of administration of the account;

(2) the effective date of the change; and

(3) the person's rights with respect to objecting to the change.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.110. FAILURE TO SEND NOTICE OF CHANGE IN SITUS OF ADMINISTRATION. (a) If the substitute fiduciary of a fiduciary account intentionally fails to send the required notice under Section 274.109, the change in the situs of administration is ineffective.

(b) If the substitute fiduciary unintentionally fails to send the required notice, the change in the situs of administration is not impaired.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.111. EFFECTIVE DATE OF CHANGE IN SITUS OF ADMINISTRATION OF FIDUCIARY ACCOUNT. (a) A change in the situs of administration takes effect on the effective date stated in the notice under Section 274.109 unless, not later than the 16th day before the effective date:

(1) each party entitled to receive notice for the fiduciary account provides the subsidiary trust company with a written objection to the change; or

(2) a party entitled to receive notice files a written petition in a court seeking to have the change denied under Section 274.112 and provides the subsidiary trust company with a copy of the petition.

(b) A change that is objected to under Subsection (a)(1) takes effect when:

(1) one of the parties objecting to the change removes the party's objection in writing; or

(2) the subsidiary trust company obtains a final court order approving the change.

(c) A change that is objected to under Subsection (a)(2) takes effect when:

(1) the petition is withdrawn or dismissed; or

(2) the court enters a final order denying the relief sought.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.112. HEARING ON CHANGE IN SITUS OF ADMINISTRATION OF FIDUCIARY ACCOUNT. (a) A court may allow the change in the situs of administration if the court, after notice and hearing, determines that the change is in the best interests of the fiduciary account and its beneficiaries. The court may deny the change if the court, after notice and hearing, determines that the change is not in the best interests of the account or its beneficiaries.

(b) In a proceeding under this section, the court may award costs and reasonable and necessary attorney's fees as the court considers equitable and just.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.113. VENUE. (a) An action under this subchapter for a fiduciary account resulting from a decedent's estate or guardianship must be brought in the county provided for by the Estates Code with respect to the probate of a will, issuance of letters testamentary or of administration, administration of a decedent's estate, appointment of a guardian, and administration of a guardianship.

(b) Except as provided by Subsection (c), an action under this subchapter regarding any other fiduciary account must be brought in the county of the situs of administration of the account, notwithstanding a statute that would set venue in the location of the fiduciary's principal office.

(c) A beneficiary of a fiduciary account described by Subsection (b) may elect to bring the action in the county in which the principal office of the first affiliated bank that transferred the account under this subchapter is located.

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. 20.019, eff. September 1, 2015.

Sec. 274.114. SUBSIDIARY TRUST COMPANY AS SUCCESSOR FIDUCIARY. For purposes of qualifying as successor fiduciary under a document creating a fiduciary account or a statute of this state relating to fiduciary accounts, a subsidiary trust company:

(1) is considered to have capital and surplus in an amount equal to the total of its capital and surplus and the capital and surplus of the bank holding company that owns the company; and

(2) is treated as a national bank unless it:

(A) is not a national bank under federal law; and

(B) has not entered into a substitution agreement with an affiliated bank of the company that is a national bank under

federal law.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.115. BOND OF SUCCESSOR FIDUCIARY. If an affiliated bank of a subsidiary trust company has given bond to secure performance of its duties and the company qualifies as successor fiduciary, the company shall give bond to secure performance of its duties in the same manner as the bank.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.116. RESPONSIBILITY FOR SUBSIDIARY TRUST COMPANY. The bank holding company that owns a subsidiary trust company shall file with the commissioner an irrevocable undertaking to be fully responsible for the fiduciary acts and omissions of the subsidiary trust company.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER C. BANKS AFFILIATED WITH SUBSIDIARY TRUST COMPANIES

Sec. 274.201. DESIGNATION OF AFFILIATED BANK AS FIDUCIARY IN WILL. The prospective designation in a will or other instrument of an affiliated bank of a subsidiary trust company as fiduciary is also considered a designation of the company as fiduciary and confers on the company any discretionary power granted in the instrument unless:

(1) the bank and company agree in writing to have the designation of the bank as fiduciary be binding; or

(2) the creator of the fiduciary account, by appropriate language in the document creating the account, provides that the account is not eligible for substitution under this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.202. LIABILITY OF AFFILIATED BANK ACTING AS FIDUCIARY. After a substitution of a subsidiary trust company as fiduciary for an affiliated bank of the company, the bank remains liable for any

action taken by the bank as a fiduciary.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 274.203. DEPOSIT OF MONEY WITH AFFILIATED BANK. (a) A subsidiary trust company may deposit with an affiliated bank of the company fiduciary money that is being held pending an investment, distribution, or payment of a debt if:

(1) the company maintains under its control as security for the deposit a separate fund of securities legal for trust investments pledged by the bank;

(2) the total market value of the securities is at all times at least equal to the amount of the deposit; and

(3) the fund of securities is designated as a separate fund.

(b) The bank may make periodic withdrawals from or additions to the fund of securities required by this section only if the required value is maintained.

(c) Income from securities in the fund belongs to the bank.

(d) Security for a deposit under this section is not required to the extent the deposit is insured or otherwise secured under law.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 275. TEXAS MUTUAL TRUST INVESTMENT COMPANY ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 275.001. SHORT TITLE. This chapter may be cited as the Texas Mutual Trust Investment Company Act.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.26(a), eff. Sept. 1, 1999.

Sec. 275.002. DEFINITIONS. In this chapter:

(1) "Fiduciary institution" means a:

(A) state bank with trust powers;

(B) national bank with trust powers; or

(C) trust company.

(2) "Stock" means a unit of participation in the net asset

value of one or more of the investment funds of a mutual trust investment company.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.26(a), eff. Sept. 1, 1999.

Sec. 275.003. APPLICATION OF GENERAL CORPORATION LAW. Except as provided by this chapter, a mutual trust investment company must be incorporated under and is subject to the general corporation laws of this state.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.26(a), eff. Sept. 1, 1999.

Sec. 275.004. INVESTMENT OF CORPORATION ASSETS. A mutual trust investment company may invest its assets only in investments in which a trustee may invest under the laws of this state.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.26(a), eff. Sept. 1, 1999.

SUBCHAPTER B. CREATION OF MUTUAL TRUST INVESTMENT COMPANY

Sec. 275.051. CREATION OF MUTUAL TRUST INVESTMENT COMPANY. (a) One or more fiduciary institutions may incorporate a mutual trust investment company as provided by this chapter to be a medium for the common investment of trust funds held in a fiduciary capacity for fiduciary purposes, by those entities alone or with one or more cofiduciaries.

(b) A mutual trust investment company must be an open-end investment company as defined by, and must be subject to, the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.26(a), eff. Sept. 1, 1999.

Sec. 275.052. INCORPORATORS. (a) To incorporate, a mutual trust investment company must have five or more persons subscribe and

acknowledge the company's articles of incorporation.

(b) A person subscribing and acknowledging the articles of incorporation of a mutual trust investment company must be an officer or director of a fiduciary institution causing the mutual trust investment company to be incorporated.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.26(a), eff. Sept. 1, 1999.

Sec. 275.053. CONTENTS OF ARTICLES OF INCORPORATION. In addition to the information required by the general corporation laws, the articles of incorporation shall state:

(1) the name of each fiduciary institution causing the corporation to be incorporated; and

(2) the amount of stock originally subscribed for by each fiduciary institution.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.26(a), eff. Sept. 1, 1999.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 275.101. DIRECTORS. (a) Except as provided by Subsection (b), a mutual trust investment company must have at least five directors, each of whom is not required to be a stockholder but must be an officer or director of a bank or trust company that is located in this state.

(b) An officer or director of a bank or trust company not located in this state may serve as a director of a mutual trust investment company only if that officer's or director's bank or trust company owns stock in a fiduciary capacity in the mutual trust investment company.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.26(a), eff. Sept. 1, 1999.

Sec. 275.102. AUDITS AND REPORTS. (a) At least once each year, a mutual trust investment company shall cause an adequate audit to be made of the company by auditors responsible only to the board

of directors of the company.

(b) A mutual trust investment company shall furnish annually a copy of the company's audited financial statement to each corporate fiduciary owning stock in the company.

(c) The mutual trust investment company shall pay the:

(1) reasonable expenses of an audit required by this section made by an independent public accountant or certified public accountant; and

(2) costs of preparing and distributing a report required by this section.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.26(a), eff. Sept. 1, 1999.

SUBCHAPTER D. MUTUAL TRUST INVESTMENT COMPANY STOCK

Sec. 275.151. OWNERSHIP. The stock of a mutual trust investment company may be owned only by fiduciary institutions acting as fiduciaries and any of their cofiduciaries.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.26(a), eff. Sept. 1, 1999.

Sec. 275.152. REGISTRATION. The stock of a mutual trust investment company may be registered in the name of one or more nominees of the owner of the stock.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.26(a), eff. Sept. 1, 1999.

Sec. 275.153. TRANSFER AND ASSIGNMENT. The stock of a mutual trust investment company may not be transferred except to:

(1) the mutual trust investment company; or

(2) a fiduciary or cofiduciary that becomes successor to a stockholder and that is a bank or trust company qualified to hold the stock under this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.26(a), eff. Sept. 1, 1999.

Sec. 275.154. OWNERSHIP BY MUTUAL TRUST INVESTMENT COMPANY. A mutual trust investment company may acquire its own stock and shall bind itself, by contract or its bylaws, to acquire its own stock, but may not vote on shares of its own stock.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.26(a), eff. Sept. 1, 1999.

SUBCHAPTER E. INVESTMENT IN MUTUAL TRUST INVESTMENT COMPANY

Sec. 275.201. PURCHASE BY FIDUCIARY; AUTHORITY AND RESTRICTIONS. A fiduciary institution, alone or with one or more cofiduciaries, acting as a fiduciary for fiduciary purposes with the consent of any cofiduciaries, may invest and reinvest funds held in a fiduciary capacity, exercising the care of a prudent investor, in the shares of stock of a mutual trust investment company unless a will, trust indenture, or other instrument under which the fiduciary is acting prohibits that investment.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.26(a), eff. Sept. 1, 1999.

Sec. 275.202. RESPONSIBILITY OF MUTUAL TRUST INVESTMENT COMPANY. (a) A mutual trust investment company is not:

(1) required to determine the investment powers of a fiduciary that purchases its stock; or

(2) liable for accepting funds from a fiduciary in violation of the restrictions of a will, trust indenture, or other instrument under which the fiduciary is acting in the absence of actual knowledge of the violation.

(b) A mutual trust investment company is:

(1) accountable only to a fiduciary who is an owner of its stock; and

(2) permitted to rely on the written statement of any bank or trust company purchasing its stock that the purchase complies with Section 275.201.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.26(a), eff. Sept. 1,

1999.

CHAPTER 276. FINANCIAL INSTITUTION ACCOUNTS

Sec. 276.001. ACCOUNTS FOR CANDIDATES FOR PUBLIC OFFICE. (a) A financial institution may not open an account in the name of a candidate without obtaining that candidate's consent and signature. This subsection does not require that the candidate be a signatory to the account.

(b) In this section:

(1) "Candidate" has the meaning assigned by Section 251.001, Election Code.

(2) "Financial institution" means a bank, savings and loan association, savings bank, or credit union.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.27(a), eff. Sept. 1, 1999.

Sec. 276.002. GARNISHMENT OF FINANCIAL INSTITUTION ACCOUNT. (a) Notwithstanding the Texas Rules of Civil Procedure, if a financial institution fails to timely file an answer to a writ of garnishment issued before or after a judgment is rendered in the case, a court may enter a default judgment against the financial institution solely as to the existence of liability and not as to the amount of damages.

(b) A financial institution against which a default judgment is entered under Subsection (a) is not deemed to have in the financial institution's possession or to have knowledge of sufficient debts, assets, or personal effects of the debtor to satisfy the debtor's obligations to the garnishor.

(c) After a default judgment is entered against a financial institution as to the existence of liability as provided by Subsection (a), the garnishor has the burden to establish the amount of actual damages proximately caused to the garnishor by the financial institution's default.

(d) The court may award to the garnishor:

(1) damages in the amount determined under Subsection (c); and

(2) for good cause shown, reasonable attorney's fees

incurred by the garnishor in establishing damages under Subsection (c).

(e) Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this section.

Added by Acts 2005, 79th Leg., Ch. 1319 (H.B. 3428), Sec. 1, eff. September 1, 2005.

Sec. 276.003. USE OF PROCEEDS OF EXTENSION OF CREDIT FOR FINANCIAL INSTITUTION ACCOUNT. (a) An obligor may use proceeds of an extension of credit made by a financial institution for business, commercial, investment, or similar purposes to establish collateral for the extension of credit by:

(1) making deposits;

(2) purchasing certificates of deposit; or

(3) establishing other accounts at the financial institution.

(b) The amount of the proceeds used as provided by Subsection (a) is not considered a reduction in the amount of the proceeds of the extension of credit for purposes of Title 4 or for any other purpose.

(c) A determination by the obligor that it is beneficial to use proceeds of an extension of credit in the manner described by Subsection (a) is conclusive.

(d) This section may not be construed to imply a contrary rule for transactions not covered by this section.

Added by Acts 2005, 79th Leg., Ch. 1319 (H.B. 3428), Sec. 1, eff. September 1, 2005.

CHAPTER 277. BUSINESS CHECKING ACCOUNTS

Sec. 277.001. DEFINITIONS. In this chapter:

(1) "Business" means a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit.

(2) "Business checking account" means an account at a financial institution from which withdrawals may be made by a business by check or draft. The term includes a money market

account, a negotiable order of withdrawal account, or other account at a financial institution in which the account holder has check writing privileges.

(3) "Financial institution" means a state or national bank, state or federal savings and loan association, state or federal savings bank, or state or federal credit union doing business in this state.

Added by Acts 1999, 76th Leg., ch. 998, Sec. 1, eff. Sept. 1, 1999.

Sec. 277.002. ACCOUNT INFORMATION REQUIRED. (a) A financial institution shall require, as a condition of opening or maintaining a business checking account, that the applicant or account holder provide:

(1) if the business is a sole proprietorship:

(A) the name of the business owner;

(B) the physical address of the business;

(C) the home address of the business owner; and

(D) the driver's license number of the business owner or the personal identification card number issued to the business owner by the Department of Public Safety; or

(2) if the business is a corporation or other legal entity, a copy of the business's certificate of incorporation or a comparable document and an assumed name certificate, if any.

(b) The financial institution shall request that the account holder inform the institution at least annually of any changes in the information the institution is required to obtain under Subsection (a).

Added by Acts 1999, 76th Leg., ch. 998, Sec. 1, eff. Sept. 1, 1999.

Sec. 277.003. DISCLOSURE OF INFORMATION. (a) A financial institution may not unreasonably withhold the information described by Section 277.002 in response to a written request for the information that:

(1) is made by a person to whom the financial institution has returned a dishonored check or draft that was issued to the person by a business that maintains a business checking account; and

(2) includes a photocopy of the dishonored check or draft.

(b) A financial institution that assesses a reasonable research fee in the regular course of business may assess the fee on a person who requests information under this section.

(c) A financial institution is not liable to an account holder or other person for the disclosure of information under this section.

Added by Acts 1999, 76th Leg., ch. 998, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 278. REGULATION OF CURRENCY TRANSMISSIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 278.001. DEFINITIONS. In this chapter:

(1) "Currency" has the meaning assigned by Section 151.501.

(2) "Currency transmission business" means engaging in or offering currency transmission as a service or for profit. The term does not include:

(A) a federally insured financial institution, as defined by Section 201.101, that is organized under the laws of this state, another state, or the United States; or

(B) a title insurance company or title insurance agent, as defined by Section 2501.003, Insurance Code.

(3) "Currency transmission" means receiving currency or an instrument payable in currency in order to transmit the currency or its equivalent by wire, computer modem, facsimile, physical transport, or any other means or through the use of a financial intermediary, the Federal Reserve System, or another funds transfer network.

(4) "Fee" does not include revenue that a currency transmission business generates in connection with a currency transmission in the conversion of a currency of one government into the currency of another government.

Added by Acts 2003, 78th Leg., ch. 1001, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.112, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 988 (H.B. 2134), Sec. 17, eff. September 1, 2013.

SUBCHAPTER B. CURRENCY TRANSMISSION DISCLOSURES

Sec. 278.051. DISCLOSURES WITH TRANSACTION. (a) Other than in a telephonic transaction conducted on a telephone that is not designated for use in currency transmission transactions by a currency transmission business, at the time of a currency transmission transaction to another country the currency transmission business shall provide a receipt to the customer. The receipt must:

(1) clearly state the amount of currency presented for transmission and any fees charged by the currency transmission business; and

(2) provide a toll-free telephone number or a local number that a customer can access at no charge to receive information about a currency transmission.

(b) If the rate of exchange for a currency transmission to be paid in the currency of another country is fixed by the currency transmission business for a transaction at the time the currency transmission is initiated, the receipt must also disclose:

(1) the rate of exchange for that transaction;

(2) the amount to be paid in the foreign currency; and

(3) the period, if any, in which the payment must be made in order to qualify for the fixed rate of exchange.

(c) If the rate of exchange for a currency transmission to be paid in the currency of another country is not fixed at the time the currency transmission is initiated, the receipt must also disclose that the rate of exchange for the transaction will be set at the time the recipient of the currency transmission receives the funds in the foreign country.

(d) If the customer requests, the currency transmission business must provide the required disclosures before completing the transaction.

Added by Acts 2003, 78th Leg., ch. 1001, Sec. 7, eff. Sept. 1, 2003.

Sec. 278.052. CANCELLATION AND REFUND OF TRANSACTION. (a) Except as provided by Subsection (c), on receiving the transaction receipt required under Section 278.051, a customer may cancel the currency transaction:

(1) before leaving the premises of the currency transmission business; and

(2) not later than 30 minutes after the time at which the

currency transmission was initiated.

(b) If the customer cancels the transaction, the currency transmission business shall immediately refund to the customer the fees paid and currency to be transmitted.

(c) A customer may not cancel a transaction after the recipient of the currency transmission has received the currency or its equivalent.

Added by Acts 2003, 78th Leg., ch. 1001, Sec. 7, eff. Sept. 1, 2003.

SUBCHAPTER C. ENFORCEMENT

Sec. 278.101. CIVIL PENALTY. (a) A person who knowingly violates this chapter is liable to the state for a civil penalty in an amount not to exceed $1,000 for each violation. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring:

(1) a suit to recover the civil penalty imposed under this section; and

(2) an action in the name of the state to restrain or enjoin a person from violating this chapter.

(b) The attorney general or the prosecuting attorney in the county in which the violation occurs, as appropriate, is entitled to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, under this section, including reasonable attorney's fees, court costs, and investigatory costs.

Added by Acts 2003, 78th Leg., ch. 1001, Sec. 7, eff. Sept. 1, 2003.

CHAPTER 279. BANKING AND CREDIT UNION DEVELOPMENT DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 279.001. DEFINITIONS. In this chapter:

(1) "Credit union" means a state or federal credit union.

(2) "Finance commission" means the Finance Commission of Texas.

(3) "Financial institution" means a state or national bank, a state or federal savings bank, or a state or federal savings and loan association.

(4) "Local government" means a municipality or county.

Added by Acts 2015, 84th Leg., R.S., Ch. 967 (H.B. 1626), Sec. 1, eff. September 1, 2015.

SUBCHAPTER B. BANKING DEVELOPMENT DISTRICTS

Sec. 279.051. ADMINISTRATION OF PROGRAM. The finance commission shall administer and monitor a banking development district program under this chapter to encourage the establishment of branches of a financial institution in geographic areas where there is a demonstrated need for banking services.

Added by Acts 2015, 84th Leg., R.S., Ch. 967 (H.B. 1626), Sec. 1, eff. September 1, 2015.

Sec. 279.052. RULES. (a) Subject to Subsection (b), the finance commission shall adopt rules to implement this subchapter and Subchapter D with respect to financial institutions in banking development districts.

(b) The finance commission, in consultation with the Texas Economic Development and Tourism Office, shall adopt rules regarding the criteria for the designation of banking development districts under this subchapter. The rules must require the finance commission to consider:

(1) the location, number, and proximity of sites where banking services are available in the proposed banking development district;

(2) consumer needs for banking services in the proposed district;

(3) the economic viability and local credit needs of the community in the proposed district;

(4) the existing commercial development in the proposed district; and

(5) the impact additional banking services would have on potential economic development in the proposed district.

Added by Acts 2015, 84th Leg., R.S., Ch. 967 (H.B. 1626), Sec. 1, eff. September 1, 2015.

Sec. 279.053. APPLICATION FOR DESIGNATION OF BANKING

DEVELOPMENT DISTRICT. A local government, in conjunction with a financial institution, may submit an application to the finance commission for the designation of a banking development district.

Added by Acts 2015, 84th Leg., R.S., Ch. 967 (H.B. 1626), Sec. 1, eff. September 1, 2015.

Sec. 279.054. APPLICATION BY FINANCIAL INSTITUTION TO OPEN BRANCH IN DISTRICT. A financial institution may apply to open a branch in the proposed banking development district at the time the local government submits an application in conjunction with the institution under Section 279.053.

Added by Acts 2015, 84th Leg., R.S., Ch. 967 (H.B. 1626), Sec. 1, eff. September 1, 2015.

Sec. 279.055. DETERMINATION BY FINANCE COMMISSION. (a) Not later than the 120th day after the date an application for the designation of a banking development district is submitted under Section 279.053, the finance commission shall make a determination regarding whether to approve the application.

(b) If the finance commission approves the application, the finance commission shall notify the:

(1) local government;
(2) financial institution;
(3) comptroller;
(4) Texas Economic Development and Tourism Office;
(5) lieutenant governor; and
(6) speaker of the house of representatives.

Added by Acts 2015, 84th Leg., R.S., Ch. 967 (H.B. 1626), Sec. 1, eff. September 1, 2015.

SUBCHAPTER C. CREDIT UNION DEVELOPMENT DISTRICTS

Sec. 279.101. ADMINISTRATION OF PROGRAM. The Credit Union Commission shall administer and monitor a credit union development district program under this chapter to encourage the establishment of branches of a credit union in geographic areas where there is a

demonstrated need for services provided by a credit union.

Added by Acts 2015, 84th Leg., R.S., Ch. 967 (H.B. 1626), Sec. 1, eff. September 1, 2015.

Sec. 279.102. RULES. (a) Subject to Subsection (b), the Credit Union Commission shall adopt rules to implement this subchapter and Subchapter D with respect to credit unions in credit union development districts.

(b) The Credit Union Commission, in consultation with the Texas Economic Development and Tourism Office, shall adopt rules regarding the criteria for the designation of credit union development districts under this subchapter. The rules must require the Credit Union Commission to consider:

(1) the location, number, and proximity of sites where services provided by a credit union are available in the proposed credit union development district;

(2) consumer needs for services provided by a credit union in the proposed district;

(3) the economic viability and local credit needs of the community in the proposed district;

(4) the existing commercial development in the proposed district; and

(5) the impact additional services provided by a credit union would have on potential economic development in the proposed district.

Added by Acts 2015, 84th Leg., R.S., Ch. 967 (H.B. 1626), Sec. 1, eff. September 1, 2015.

Sec. 279.103. APPLICATION FOR DESIGNATION OF CREDIT UNION DEVELOPMENT DISTRICT. A local government, in conjunction with a credit union, may submit an application to the Credit Union Commission for the designation of a credit union development district.

Added by Acts 2015, 84th Leg., R.S., Ch. 967 (H.B. 1626), Sec. 1, eff. September 1, 2015.

Sec. 279.104. APPLICATION BY CREDIT UNION TO OPEN BRANCH IN DISTRICT. A credit union may apply to open a branch in the proposed credit union development district at the time the local government submits an application in conjunction with the credit union under Section 279.103.

Added by Acts 2015, 84th Leg., R.S., Ch. 967 (H.B. 1626), Sec. 1, eff. September 1, 2015.

Sec. 279.105. DETERMINATION BY CREDIT UNION COMMISSION. (a) Not later than the 120th day after the date an application for the designation of a credit union development district is submitted under Section 279.103, the Credit Union Commission shall make a determination regarding whether to approve the application.

(b) If the Credit Union Commission approves the application, the Credit Union Commission shall notify the:

(1) local government;
(2) credit union;
(3) comptroller;
(4) Texas Economic Development and Tourism Office;
(5) lieutenant governor; and
(6) speaker of the house of representatives.

Added by Acts 2015, 84th Leg., R.S., Ch. 967 (H.B. 1626), Sec. 1, eff. September 1, 2015.

SUBCHAPTER D. DEPOSIT OF PUBLIC FUNDS IN DISTRICT DEPOSITORY

Sec. 279.151. DESIGNATION OF DISTRICT DEPOSITORY. (a) The governing body of a local government in which a banking development district has been designated under Subchapter B may by resolution designate a financial institution located in the district as a banking district depository for purposes of this subchapter.

(b) The governing body of a local government in which a credit union development district has been designated under Subchapter C may by resolution designate a credit union located in the district as a credit union district depository for purposes of this subchapter.

(c) A resolution adopted under Subsection (a) or (b) must specify the maximum amount that may be kept on deposit with the banking district or credit union district depository, as appropriate.

(d) In calculating the yield under Section 2256.006, Government Code, of public funds deposited in a banking district or credit union district depository, the governing body of a local government may consider the benefit to this state of stimulating economic development.

Added by Acts 2015, 84th Leg., R.S., Ch. 967 (H.B. 1626), Sec. 1, eff. September 1, 2015.

Sec. 279.152. DEPOSIT OF PUBLIC FUNDS BY LOCAL GOVERNMENT. (a) A local government may deposit public funds with a financial institution designated as a banking district depository or a credit union designated as a credit union district depository under Section 279.151 regardless of whether the financial institution or credit union is designated by the comptroller as a state depository under Subchapter C, Chapter 404, Government Code.

(b) Subject to an agreement between the governing body and the banking district or credit union district depository, public funds deposited in the district depository may earn a fixed interest rate that is at or below the financial institution's or credit union's posted two-year certificate of deposit rate, as appropriate. The terms of the agreement must be specified in the applicable resolution adopted under Section 279.151.

Added by Acts 2015, 84th Leg., R.S., Ch. 967 (H.B. 1626), Sec. 1, eff. September 1, 2015.

Sec. 279.153. DEPOSIT OF PUBLIC FUNDS BY STATE. (a) If the comptroller designates the financial institution as a state depository under Subchapter C, Chapter 404, Government Code, the comptroller may deposit public funds with a financial institution designated as a banking district depository under Section 279.151(a).

(b) If the comptroller designates the credit union as a state depository under Subchapter C, Chapter 404, Government Code, the comptroller may deposit public funds with a credit union designated as a credit union district depository under Section 279.151(b).

(c) For purposes of Subsections (a) and (b), a financial institution or credit union is subject to the collateral requirements of Section 404.031, Government Code.

(d) Subject to an agreement between the comptroller and the banking district or credit union district depository, public funds deposited in the district depository may earn a fixed interest rate that is at or below the financial institution's or credit union's posted two-year certificate of deposit rate, as appropriate.

(e) In calculating the yield under Section 2256.006, Government Code, of public funds deposited in a banking district or credit union district depository, the comptroller may consider the benefit to this state of stimulating economic development.

Added by Acts 2015, 84th Leg., R.S., Ch. 967 (H.B. 1626), Sec. 1, eff. September 1, 2015.

CHAPTER 280. SAVINGS PROMOTION RAFFLE

Sec. 280.001. SHORT TITLE. This chapter may be cited as the Texas Savings Promotion Act.

Added by Acts 2017, 85th Leg., R.S., Ch. 978 (H.B. 471), Sec. 3, eff. November 7, 2017.

Sec. 280.002. DEFINITIONS. In this chapter:

(1) "Credit union" means:

(A) a credit union as defined by Section 121.002; or

(B) a federal credit union doing business in this state.

(2) "Deposit," with respect to a financial institution, has the meaning assigned by Section 31.002.

(3) "Finance commission" means the Finance Commission of Texas.

(4) "Financial institution" has the meaning assigned by Section 31.002.

(5) "Savings promotion raffle" means a raffle conducted by a credit union or financial institution in which the sole action required for a chance of winning a designated prize is the deposit of at least a specified amount of money in a savings account or other savings program offered by the credit union or financial institution.

Added by Acts 2017, 85th Leg., R.S., Ch. 978 (H.B. 471), Sec. 3, eff. November 7, 2017.

Sec. 280.003. SAVINGS PROMOTION RAFFLE BY CREDIT UNION. (a) A credit union may conduct a savings promotion raffle if:

(1) each ticket or token representing an entry in the raffle has an equal probability of being drawn; and

(2) the raffle is conducted in a manner that:

(A) does not jeopardize the ability of the credit union to operate in a safe and sound manner; and

(B) does not mislead the credit union's members.

(b) A credit union may not require consideration for participation in a savings promotion raffle. A deposit of an amount of money in a savings account or other savings program that results in an entry in a savings promotion raffle is not consideration.

(c) A credit union may not require a person to pay a premium or fee for opening or using a savings account or other savings program that is subject to a savings promotion raffle, unless the premium or fee is commensurate with the premium or fee that the credit union charges for opening or using comparable savings accounts or savings programs that are not subject to a savings promotion raffle.

(d) A credit union may not limit the withdrawal of money from a savings account or other savings program that is subject to a savings promotion raffle, unless the withdrawal limits are commensurate with the withdrawal limits that the credit union imposes on comparable savings accounts or savings programs that are not subject to a savings promotion raffle. This subsection does not prohibit a credit union from requiring a deposit of an amount of money to remain in a savings account or other savings program for a certain period of time in order for the deposit to represent an entry in a savings promotion raffle.

(e) A credit union shall pay interest or dividends on a savings account or other savings program that is subject to a savings promotion raffle at a rate that is commensurate with the interest or dividend rate that the credit union pays on comparable savings accounts or savings programs that are not subject to a savings promotion raffle.

(f) A credit union that conducts a savings promotion raffle under this section shall maintain all records that the Credit Union Commission determines are necessary for the Credit Union Department to examine the raffle.

(g) The provisions of this section applicable to a credit union apply to an organization composed exclusively of credit unions.

(h) The Credit Union Commission shall adopt rules and procedures for the administration of this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 978 (H.B. 471), Sec. 3, eff. November 7, 2017.

Sec. 280.004. SAVINGS PROMOTION RAFFLE BY FINANCIAL INSTITUTION. (a) A financial institution may conduct a savings promotion raffle if:

(1) each ticket or token representing an entry in the raffle has an equal probability of being drawn; and

(2) the raffle is conducted in a manner that:

(A) does not jeopardize the ability of the financial institution to operate in a safe and sound manner; and

(B) does not mislead the institution's depositors.

(b) A financial institution may not require consideration for participation in a savings promotion raffle. A deposit of an amount of money in a savings account or other savings program that results in an entry in a savings promotion raffle is not consideration.

(c) A financial institution may not require a person to pay a premium or fee for opening or using a savings account or other savings program that is subject to a savings promotion raffle, unless the premium or fee is commensurate with the premium or fee that the financial institution charges for opening or using comparable savings accounts or savings programs that are not subject to a savings promotion raffle.

(d) A financial institution may not limit the withdrawal of money from a savings account or other savings program that is subject to a savings promotion raffle, unless the withdrawal limits are commensurate with the withdrawal limits that the financial institution imposes on comparable savings accounts or savings programs that are not subject to a savings promotion raffle. This subsection does not prohibit a financial institution from requiring a deposit of an amount of money to remain in a savings account or other savings program for a certain period of time in order for the deposit to represent an entry in a savings promotion raffle.

(e) A financial institution shall pay interest or dividends on

a savings account or other savings program that is subject to a savings promotion raffle at a rate that is commensurate with the interest or dividend rate that the financial institution pays on comparable savings accounts or savings programs that are not subject to a savings promotion raffle.

(f) A financial institution that conducts a savings promotion raffle under this section shall maintain all records that the finance commission determines are necessary for the financial regulatory agency of this state having regulatory jurisdiction over that financial institution to examine the raffle.

(g) The provisions of this section applicable to a financial institution apply to an organization composed exclusively of financial institutions.

(h) The finance commission shall adopt rules and procedures for the administration of this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 978 (H.B. 471), Sec. 3, eff. November 7, 2017.

Sec. 280.005. ACCOUNT OR DEPOSIT NOT CONSIDERATION. For purposes of Chapter 47, Penal Code, or other state law, opening or making a deposit in an account is not considered a purchase, payment, or provision of a thing of value for participation in a savings promotion raffle and is not considered to require a substantial expenditure of time, effort, or inconvenience.

Added by Acts 2017, 85th Leg., R.S., Ch. 978 (H.B. 471), Sec. 3, eff. November 7, 2017.

CHAPTER 281. PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION

Sec. 281.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Family and Protective Services.

(2) "Exploitation" means the act of forcing, compelling, or exerting undue influence over a person causing the person to act in a way that is inconsistent with the person's relevant past behavior or causing the person to perform services for the benefit of another person.

(3) "Financial exploitation" means:

(A) the wrongful or unauthorized taking, withholding, appropriation, or use of the money, assets, or other property or the identifying information of a person; or

(B) an act or omission by a person, including through the use of a power of attorney on behalf of, or as the conservator or guardian of, another person, to:

(i) obtain control, through deception, intimidation, fraud, or undue influence, over the other person's money, assets, or other property to deprive the other person of the ownership, use, benefit, or possession of the property; or

(ii) convert the money, assets, or other property of the other person to deprive the other person of the ownership, use, benefit, or possession of the property.

(4) "Financial institution" has the meaning assigned by Section 277.001.

(5) "Vulnerable adult" means:

(A) an elderly person as that term is defined by Section 48.002, Human Resources Code;

(B) a person with a disability as that term is defined by Section 48.002, Human Resources Code; or

(C) an individual receiving services as that term is defined by rule by the executive commissioner of the Health and Human Services Commission as authorized by Section 48.251(b), Human Resources Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 376 (H.B. 3921), Sec. 1, eff. September 1, 2017.
Redesignated from Finance Code, Chapter 280 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(19), eff. September 1, 2019.

Sec. 281.002. REPORTING SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS. (a) If an employee of a financial institution has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the financial institution has occurred, is occurring, or has been attempted, the employee shall notify the financial institution of the suspected financial exploitation.

(b) If a financial institution is notified of suspected

financial exploitation under Subsection (a) or otherwise has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the financial institution has occurred, is occurring, or has been attempted, the financial institution shall assess the suspected financial exploitation and submit a report to the department in the same manner as and containing the same information required to be included in a report under Section 48.051, Human Resources Code. The financial institution shall submit the report required by this subsection not later than the earlier of:

(1) the date the financial institution completes the financial institution's assessment of the suspected financial exploitation; or

(2) the fifth business day after the date the financial institution is notified of the suspected financial exploitation under Subsection (a) or otherwise has cause to believe that the suspected financial exploitation has occurred, is occurring, or has been attempted.

(c) A financial institution that submits a report to the department of suspected financial exploitation of a vulnerable adult under Subsection (b) is not required to make an additional report of suspected abuse, neglect, or exploitation under Section 48.051, Human Resources Code, for the same conduct constituting the reported suspected financial exploitation.

(d) Each financial institution shall adopt internal policies, programs, plans, or procedures for:

(1) the employees of the financial institution to make the notification required under Subsection (a); and

(2) the financial institution to conduct the assessment and submit the report required under Subsection (b).

(e) The policies, programs, plans, or procedures adopted under Subsection (d) may authorize the financial institution to report the suspected financial exploitation to other appropriate agencies and entities in addition to the department, including the attorney general, the Federal Trade Commission, and the appropriate law enforcement agency.

Added by Acts 2017, 85th Leg., R.S., Ch. 376 (H.B. 3921), Sec. 1, eff. September 1, 2017.
Redesignated from Finance Code, Chapter 280 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(19), eff. September 1, 2019.

Sec. 281.003. NOTIFYING THIRD PARTIES OF SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS. If a financial institution submits a report of suspected financial exploitation of a vulnerable adult to the department under Section 281.002(b), the financial institution may at the time the financial institution submits the report also notify a third party reasonably associated with the vulnerable adult of the suspected financial exploitation, unless the financial institution suspects the third party of financial exploitation of the vulnerable adult.

Added by Acts 2017, 85th Leg., R.S., Ch. 376 (H.B. 3921), Sec. 1, eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.002(6), eff. September 1, 2019.
Redesignated from Finance Code, Chapter 280 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(19), eff. September 1, 2019.

Sec. 281.004. TEMPORARY HOLD ON TRANSACTIONS IN CERTAIN CASES OF SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS. (a) Notwithstanding any other law, if a financial institution submits a report of suspected financial exploitation of a vulnerable adult to the department under Section 281.002(b), the financial institution:

(1) may place a hold on any transaction that:

(A) involves an account of the vulnerable adult; and

(B) the financial institution has cause to believe is related to the suspected financial exploitation; and

(2) must place a hold on any transaction involving an account of the vulnerable adult if the hold is requested by the department or a law enforcement agency.

(b) Subject to Subsection (c), a hold placed on any transaction under Subsection (a) expires on the 10th business day after the date the financial institution submits the report under Section 281.002(b).

(c) The financial institution may extend a hold placed on any transaction under Subsection (a) for a period not to exceed 30 business days after the expiration of the period prescribed by

Subsection (b) if requested by a state or federal agency or a law enforcement agency investigating the suspected financial exploitation. The financial institution may also petition a court to extend a hold placed on any transaction under Subsection (a) beyond the period prescribed by Subsection (b). A court may enter an order extending or shortening a hold or providing other relief.

(d) Each financial institution shall adopt internal policies, programs, plans, or procedures for placing a hold on a transaction involving an account of a vulnerable adult under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 376 (H.B. 3921), Sec. 1, eff. September 1, 2017.
Redesignated from Finance Code, Chapter 280 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(19), eff. September 1, 2019.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.002(7), eff. September 1, 2019.

Sec. 281.005. IMMUNITY. (a) An employee of a financial institution who makes a notification under Section 281.002(a), a financial institution that submits a report under Section 281.002(b) or makes a notification to a third party under Section 281.003, or an employee who or financial institution that testifies or otherwise participates in a judicial proceeding arising from a notification or report is immune from any civil or criminal liability arising from the notification, report, testimony, or participation in the judicial proceeding, unless the employee or financial institution acted in bad faith or with a malicious purpose.

(b) A financial institution that in good faith and with the exercise of reasonable care places or does not place a hold on any transaction under Section 281.004(a)(1) is immune from any civil or criminal liability or disciplinary action resulting from that action or failure to act.

Added by Acts 2017, 85th Leg., R.S., Ch. 376 (H.B. 3921), Sec. 1, eff. September 1, 2017.
Redesignated from Finance Code, Chapter 280 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(19), eff. September 1, 2019.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.002(8),

eff. September 1, 2019.

Sec. 281.006. RECORDS. To the extent permitted by state or federal law, a financial institution shall provide, on request, access to or copies of records relevant to the suspected financial exploitation of a vulnerable adult to the department, a law enforcement agency, or a prosecuting attorney's office, either as part of a report to the department, law enforcement agency, or prosecuting attorney's office or at the request of the department, law enforcement agency, or prosecuting attorney's office in accordance with an investigation.

Added by Acts 2017, 85th Leg., R.S., Ch. 376 (H.B. 3921), Sec. 1, eff. September 1, 2017.
Redesignated from Finance Code, Chapter 280 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(19), eff. September 1, 2019.

TITLE 4. REGULATION OF INTEREST, LOANS, AND FINANCED TRANSACTIONS
SUBTITLE A. INTEREST
CHAPTER 301. GENERAL PROVISIONS

Sec. 301.001. SHORT TITLE. This title may be cited as the Texas Credit Title.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 301.002. DEFINITIONS. (a) In this subtitle:

(1) "Contract interest" means interest that an obligor has paid or agreed to pay to a creditor under a written contract of the parties. The term does not include judgment interest.

(2) "Credit card transaction" means a transaction for personal, family, or household use in which a credit card, plate, coupon book, or credit card cash advance check may be used or is used to debit an open-end account in connection with:

(A) a purchase or lease of goods or services; or

(B) a loan of money.

(3) "Creditor" means a person who loans money or otherwise extends credit. The term does not include a judgment creditor.

(4) "Interest" means compensation for the use, forbearance, or detention of money. The term does not include time price differential, regardless of how it is denominated. The term does not include compensation or other amounts that are determined or stated by this code or other applicable law not to constitute interest or that are permitted to be contracted for, charged, or received in addition to interest in connection with an extension of credit.

(5) "Judgment creditor" means a person to whom a money judgment is payable.

(6) "Judgment debtor" means a person obligated to pay a money judgment.

(7) "Judgment interest" means interest on a money judgment, whether the interest accrues before, on, or after the date the judgment is rendered.

(8) "Legal interest" means interest charged or received in the absence of any agreement by an obligor to pay contract interest. The term does not include judgment interest.

(9) "Lender credit card agreement":

(A) means an agreement between a creditor and an obligor that provides that:

(i) the obligor, by means of a credit card transaction for personal, family, or household use, may:

(a) obtain loans from the creditor directly or through other participating persons; and

(b) lease or purchase goods or services from more than one participating lessor or seller who honors the creditor's credit card;

(ii) the creditor or another person acting in cooperation with the creditor is to reimburse the participating persons, lessors, or sellers for the loans or the goods or services purchased or leased;

(iii) the obligor is to pay the creditor the amount of the loan or cost of the lease or purchase;

(iv) the unpaid balance of the loan, lease, or purchase and interest on that unpaid balance are debited to the obligor's account under the agreement;

(v) interest may be computed on the balances of the obligor's account but is not precomputed; and

(vi) the obligor and the creditor may agree that payment of part of the balance may be deferred;

(B) includes an agreement under Section 342.455 or Section 346.003(b) or (c) for an open-end account under which credit card transactions may be made or a merchant discount may be taken; and

(C) does not include:

(i) an agreement, including an open-end account credit agreement, between a seller and a buyer or between a lessor and a lessee; or

(ii) an agreement under which:

(a) the entire balance is due in full each month; and

(b) no interest is charged if the obligor pays the entire balance each month.

(10) "Loan" means an advance of money that is made to or on behalf of an obligor, the principal amount of which the obligor has an obligation to pay the creditor. The term does not include a judgment.

(11) "Merchant discount" means the consideration, including a fee, charge, discount, or compensating balance, that a creditor requires, or that a creditor, subsidiary, or parent company of the creditor, or subsidiary of the creditor's parent company, receives directly or indirectly from a person other than the obligor in connection with a credit card transaction under a lender credit card agreement between the obligor and the creditor. The term does not include consideration received by a creditor from the obligor in connection with the credit card transaction.

(12) "Money judgment" means a judgment for money. For purposes of this subtitle, the term includes legal interest or contract interest, if any, that is payable to a judgment creditor under a judgment.

(13) "Obligor" means a person to whom money is loaned or credit is otherwise extended. The term does not include:

(A) a judgment debtor; or

(B) a surety, guarantor, or similar person.

(14) "Open-end account":

(A) means an account under a written contract between a creditor and an obligor in connection with which:

(i) the creditor reasonably contemplates repeated transactions and the obligor is authorized to make purchases or borrow money;

(ii) interest or time price differential may be charged from time to time on an outstanding unpaid balance; and

(iii) the amount of credit that may be extended during the term of the account is generally made available to the extent that any outstanding balance is repaid; and

(B) includes an account under an agreement described by Section 342.455 or Chapter 345 or 346.

(15) "Prepayment penalty" means consideration agreed on and contracted for a discharge of a loan, other than a loan governed by Chapter 306, before its maturity or a regularly scheduled date of payment, as a result of an obligor's election to pay all of the principal amount before its stated maturity or a regularly scheduled date of payment.

(16) "Time price differential" means an amount, however denominated or expressed, that is:

(A) added to the price at which a seller offers to sell services or property to a purchaser for cash payable at the time of sale; and

(B) paid or payable to the seller by the purchaser for the privilege of paying the offered sales price after the time of sale.

(17) "Usurious interest" means interest that exceeds the applicable maximum amount allowed by law.

(b) The Finance Commission of Texas by rule may adopt other definitions to accomplish the purposes of this title.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 909, Sec. 2.01, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.01, eff. September 1, 2005.

CHAPTER 302. INTEREST RATES

SUBCHAPTER A. USURIOUS INTEREST

Sec. 302.001. CONTRACTING FOR, CHARGING, OR RECEIVING INTEREST OR TIME PRICE DIFFERENTIAL; USURIOUS INTEREST. (a) A creditor may contract for, charge, and receive from an obligor interest or time price differential.

(b) The maximum rate or amount of interest is 10 percent a year

except as otherwise provided by law. A greater rate of interest than 10 percent a year is usurious unless otherwise provided by law. All contracts for usurious interest are contrary to public policy and subject to the appropriate penalty prescribed by Chapter 305.

(c) To determine the interest rate of a loan under this subtitle, all interest at any time contracted for shall be aggregated and amortized using the actuarial method during the stated term of the loan.

(d) In addition to interest authorized by Subsection (b), a loan providing for a rate of interest that is 10 percent a year or less may provide for a delinquency charge on the amount of any payment in default for a period of not less than 10 days in an amount not to exceed the greater of five percent of the amount of the payment or $7.50. The charging of the delinquency charge does not make the loan subject to Chapter 342 or any other provision of Subtitle B.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 916, Sec. 8, eff. Sept. 1, 2001.

Sec. 302.002. ACCRUAL OF INTEREST WHEN NO RATE SPECIFIED. If a creditor has not agreed with an obligor to charge the obligor any interest, the creditor may charge and receive from the obligor legal interest at the rate of six percent a year on the principal amount of the credit extended beginning on the 30th day after the date on which the amount is due. If an obligor has agreed to pay to a creditor any compensation that constitutes interest, the obligor is considered to have agreed on the rate produced by the amount of that interest, regardless of whether that rate is stated in the agreement.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

SUBCHAPTER B. OTHER RATES AND PROVISIONS ON LOANS SECURED BY REAL PROPERTY

Sec. 302.101. DETERMINING RATES OF INTEREST BY SPREADING. (a) To determine whether a loan secured in any part by an interest in real property, including a lien, mortgage, or security interest, is usurious, the interest rate is computed by amortizing or spreading,

using the actuarial method during the stated term of the loan, all interest at any time contracted for, charged, or received in connection with the loan.

(b) If a loan described by Subsection (a) is paid in full before the end of the stated term of the loan and the amount of interest received for the period that the loan exists exceeds the amount that produces the maximum rate authorized by law for that period, the lender shall:

(1) refund the amount of the excess to the borrower; or

(2) credit the amount of the excess against amounts owing under the loan.

(c) A lender who complies with Subsection (b) is not subject to any of the penalties provided by law for contracting for, charging, or receiving interest in excess of the maximum rate authorized.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 302.102. PROHIBITION ON PREPAYMENT PENALTY. If the interest rate on a loan for property that is or is to be the residential homestead of the borrower is greater than 12 percent a year, a prepayment penalty may not be collected on the loan unless the penalty is required by an agency created by federal law.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 909, Sec. 2.02, eff. Sept. 1, 1999.

Sec. 302.103. EFFECT OF FEDERAL PREEMPTION ON LATE CHARGES. On loans subject to 12 U.S.C. Sections 1735f-7 and 1735f-7a, as amended, any late charges assessed are interest that is included in computing the amount or rate of interest on the loan and, therefore, covered by the federal preemption of state interest rate limitations.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 302.104. LOAN TO PURCHASE INTEREST IN ENTITY WITH FOREIGN REAL PROPERTY AS PRINCIPAL ASSET. (a) A loan the proceeds of which

are used primarily to purchase an interest in a trust or other entity that has as its principal asset real property located outside the United States is:

(1) not subject to Subtitle B; and

(2) subject to the interest rate limitations of Chapter 303.

(b) For the purpose of determining the interest rate on a loan to which this section applies, all interest contracted for, charged, or received shall be amortized, prorated, allocated, and spread over the full stated term of the loan.

(c) This section does not affect application of a law of this state governing collateral that may be used to secure a loan to which this section applies.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

CHAPTER 303. OPTIONAL RATE CEILINGS

SUBCHAPTER A. RATE CEILINGS: APPLICABILITY, COMPUTATION, AND PUBLICATION

Sec. 303.001. USE OF CEILINGS. (a) Except as provided by Subchapter B, a person may contract for, charge, or receive a rate or amount that does not exceed the applicable interest rate ceiling provided by this chapter. The use of a ceiling provided by this chapter for any contract is optional, and a contract may provide for a rate or amount allowed by other applicable law.

(b) A contract that is subject to Chapter 342, 345, 347, 348, or 353, including a contract for an open-end account, may, as an alternative to an interest rate or amount of time price differential allowed under that chapter, provide for a simple or precomputed rate or amount of time price differential that does not exceed the applicable ceiling provided by this chapter or by the equivalent yield authorized by Chapter 342, 345, 347, 348, or 353.

(c) Except as inconsistent with this chapter, a party to a contract that is subject to Chapter 342, 345, 347, 348, or 353, or the party's assignee, has all rights, duties, and obligations under the applicable chapter, including those relating to refund credits on prepayment or acceleration.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1,

1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 2, eff. September 1, 2011.

Sec. 303.002. WEEKLY CEILING. The parties to a written agreement may agree to an interest rate, or in an agreement described by Chapter 345, 347, 348, or 353, an amount of time price differential producing a rate, that does not exceed the applicable weekly ceiling.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 3, eff. September 1, 2011.

Sec. 303.003. COMPUTATION OF WEEKLY CEILING. (a) The weekly ceiling is computed by:

(1) multiplying the auction rate by two; and

(2) rounding the result obtained under Subdivision (1) to the nearest one-quarter of one percent.

(b) The weekly rate ceiling becomes effective on Monday of each week and remains in effect through the following Sunday.

(c) In this subchapter, "auction rate" means the auction average rate quoted on a bank discount basis for 26-week treasury bills issued by the United States government, as published by the Federal Reserve Board, for the week preceding the week in which the weekly rate ceiling is to take effect.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 909, Sec. 2.03, eff. Sept. 1, 1999.

Sec. 303.004. MONTHLY CEILING. (a) The monthly ceiling may be used as an alternative to the weekly ceiling only for a contract that:

(1) provides for a variable rate, including a contract for an open-end account; and

(2) is not made for personal, family, or household use.

(b) A contract that provides for the use of the monthly ceiling may not provide for the use of another rate ceiling provided under this subchapter.

(c) If the parties agree that the rate may be adjusted monthly, they may agree that the rate from time to time in effect may not exceed the monthly ceiling from time to time in effect, and the monthly ceiling is the ceiling on those contracts.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.005. COMPUTATION OF MONTHLY CEILING. (a) The consumer credit commissioner shall compute the monthly ceiling on the first business day of the calendar month in which the rate applies. The monthly ceiling is effective for one month beginning on the first calendar day of each month.

(b) The monthly ceiling is computed by averaging all of the weekly ceilings computed using rates from auctions held during the calendar month preceding the computation date of the monthly ceiling.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.006. QUARTERLY CEILING. (a) A written contract, including a contract that involves an open-end account, may, as an alternative to the weekly ceiling, provide for an interest rate or an amount of time price differential producing a rate that does not exceed the applicable quarterly ceiling.

(b) A variable rate contract authorized under Section 303.015 may not provide for use of both the weekly ceiling and the quarterly ceiling.

(c) Notwithstanding other provisions of this subchapter, the rate of interest on an open-end account authorized under Section 342.455 or 346.003, or an amount owed for a credit card transaction under another type of credit card agreement, in connection with which a merchant discount is imposed or received by the creditor may not exceed the applicable quarterly ceiling.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.007. ANNUALIZED CEILING. The annualized ceiling may be used as an alternative to the weekly ceiling only for a written contract that involves an open-end account.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.008. COMPUTATION OF QUARTERLY AND ANNUALIZED CEILING. (a) On December 1, March 1, June 1, and September 1 of each year, the consumer credit commissioner shall compute the quarterly ceiling and annualized ceiling for the calendar quarter effective the following January 1, April 1, July 1, and October 1, respectively. The quarterly ceiling becomes effective for three-month periods beginning on the effective dates set out in this subsection and is subject to adjustment after each three-month period. The annualized ceiling becomes effective on each of the effective dates set out in this subsection and remains in effect for a period of 12 months, after which it is subject to adjustment.

(b) The quarterly ceiling and annualized ceiling are computed by averaging all of the weekly ceilings computed using average auction rates during the three calendar months preceding the computation date of the ceiling.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.009. MAXIMUM AND MINIMUM WEEKLY, MONTHLY, QUARTERLY, OR ANNUALIZED CEILING. (a) If the rate computed for the weekly, monthly, quarterly, or annualized ceiling is less than 18 percent a year, the ceiling is 18 percent a year.

(b) Except as provided by Subsection (c), if the rate computed for the weekly, monthly, quarterly, or annualized ceiling is more than 24 percent a year, the ceiling is 24 percent a year.

(c) For a contract made, extended, or renewed under which credit is extended for a business, commercial, investment, or similar

purpose, the limitation on the ceilings determined by those computations is 28 percent a year.

(d) For an open-end account credit agreement that provides for credit card transactions on which a merchant discount is not imposed or received by the creditor or a retail charge agreement under Chapter 345 without a merchant discount, the ceiling is 21 percent a year.

(e) Repealed by Acts 1999, 76th Leg., ch. 1348, Sec. 5, eff. Sept. 1, 1999.

(f) In this chapter, "weekly ceiling," "monthly ceiling," "quarterly ceiling," or "annualized ceiling" refers to that ceiling as determined after the application of this section.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1348, Sec. 5, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.02, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1182 (H.B. 3453), Sec. 3, eff. September 1, 2011.

Sec. 303.010. COMPUTATION OF CEILING IF INFORMATION UNAVAILABLE. If any of the information required to compute a ceiling is discontinued or is otherwise not available to the consumer credit commissioner from the Federal Reserve Board in the time required for the computation, the ceiling last computed remains in effect until the information becomes available and a new ceiling is computed from the obtained information.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.011. PUBLICATION OF RATE CEILINGS. (a) The consumer credit commissioner shall send the rate ceilings computed under this subchapter to the secretary of state for publication in the Texas Register.

(b) The monthly, quarterly, or annualized ceiling shall be published before the 11th day after the date on which the ceiling is

computed.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.012. JUDICIAL NOTICE. A court may take judicial notice of interpretations issued by the consumer credit commissioner or information published in the Texas Register under Section 303.011.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.013. DETERMINATION OF CEILING FOR CONTRACT TO RENEW OR EXTEND DEBT PAYMENT. The rate ceiling for a contract to renew or extend the terms of payment of a debt is the ceiling in effect under this chapter when the contract for renewal or extension is made, regardless of when the debt is incurred.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.014. RATE FOR LENDER CREDIT CARD AGREEMENT WITH MERCHANT DISCOUNT. On an amount owed for a credit card transaction under a lender credit card agreement that imposes or allows the creditor to receive a merchant discount, the creditor may not contract for, charge, or receive:

(1) a rate that exceeds the ceiling provided under Section 303.006(c); or

(2) a fee or charge that:

(A) is not allowed under Chapter 346; or

(B) exceeds the amount allowed under Chapter 346.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.015. VARIABLE RATE. (a) The parties to a contract, including a contract for an open-end account, may agree to any index,

formula, or provision of law by which the interest rate or amount of time price differential will be determined, but the agreed rate of interest or yield from an amount of time price differential may not exceed the amount that would be produced by the rate ceiling applicable to the contract.

(b) A variable contract rate described by this section may not be used in a contract in which the interest or time price differential is precomputed and added into the amount of the contract at the time the contract is made.

(c) A variable rate agreement for credit extended primarily for personal, family, or household use must include the disclosures identified for variable rate contracts required by regulations issued by the Federal Reserve Board under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.), as amended, except that if that Act does not apply because of the amount of the transaction, the following disclosure must be included in a size equal to at least 10-point type that is boldface, capitalized, underlined, or otherwise set out from surrounding material so as to be conspicuous: "NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS 24 PERCENT PER YEAR."

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.016. CHARGING OF RATE LOWER THAN AGREED RATE. A creditor may charge an interest rate or amount of time price differential that is lower than the rate or amount agreed to in the contract.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.017. VARIOUS CHARGES ON CONSUMER LOANS MADE BY PARTICULAR LENDERS. Notwithstanding Section 342.005, a bank, savings association, savings bank, or credit union making a loan primarily for personal, family, or household use under authority of this chapter may charge all reasonable expenses and fees incurred in connection with making, closing, disbursing, extending, readjusting,

or renewing a loan not secured by real property, whether or not those expenses or fees are paid to third parties. Those reasonable expenses and fees paid to third parties are not interest.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.03, eff. September 1, 2005.

SUBCHAPTER B. OPEN-END ACCOUNTS

Sec. 303.101. OPEN-END ACCOUNT: CEILINGS. (a) To use the quarterly or annualized ceiling for setting the interest rate on current and future open-end account balances, the agreement must provide for use of the ceiling, and the creditor must give notice of the interest rate after the date on which the quarterly or annualized ceiling is computed but before the last day of the next succeeding calendar quarter.

(b) If the annualized ceiling is used, the rate is effective for the 12-month period beginning on the date on which the rate takes effect for the account.

(c) If the quarterly ceiling is used, the rate is effective for the three-month period beginning on the date on which the rate takes effect for the account. For an open-end account authorized under Section 342.455 or 346.003, in connection with which credit card transactions are authorized or a merchant discount is imposed or received by the creditor, the quarterly ceiling shall be adjusted, at the option of the creditor, on:

(1) the effective dates provided by Section 303.008; or

(2) the first day of the first billing cycle of the account beginning after those dates.

(d) If a quarterly or annualized ceiling is being used for an account and if the rate for the applicable period is less than or equal to the ceiling to be in effect for the succeeding period of equal length, the creditor may leave that rate in effect for the succeeding period.

(e) A creditor who has disclosed to an obligor that an election may be renewed under Subsection (d) is not required to give additional notice of a renewal under that subsection.

(f) To increase a previously agreed rate, a creditor shall comply with Section 303.103 before the end of the last calendar quarter of the period in which the rate previously agreed to is in

effect. The ceiling in effect for that period remains the ceiling until the parties to the agreement agree to a new rate.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.102. VARIABLE RATE OPEN-END ACCOUNT: CEILINGS. The applicable rate ceiling for an open-end account agreement that provides for a variable rate or amount according to an index, formula, or provision of law disclosed to the obligor, other than a variable rate commercial contract that is subject to Section 303.004, is the annualized, quarterly, or weekly ceiling as disclosed to the obligor. The annualized ceiling shall be adjusted after each 12-month period, the quarterly ceiling shall be adjusted after each three-month period, and the weekly ceiling shall be adjusted weekly.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.103. OPEN-END ACCOUNT: CHANGE OF AGREEMENT TERM. (a) An agreement covering an open-end account may provide that the creditor may change the terms of the agreement for current and future balances of that account by giving notice of the change to the obligor.

(b) A notice under this section to change a provision of an account, including the rate, or the index or formula used to compute the rate, must include:

(1) the new provision, the new rate, or the index or formula to be used to compute the rate;

(2) the date on which the change is to take effect;

(3) the period for which the change is to be effective or after which the rate will be adjusted;

(4) a statement of whether the change is to affect current and future balances; and

(5) the obligor's rights under this section and the procedures for the obligor to exercise those rights.

(c) A creditor who increases a rate shall include with a notice required by this section a form that may be returned at the expense of the creditor and on which the obligor may indicate by checking or

marking an appropriate box or by a similar arrangement the obligor's decision not to continue the account. The form may be included on a part of the account statement that is to be returned to the creditor or on a separate sheet. In addition to the requirements of Subsection (b), the notice must include:

(1) the address to which the obligor may send notice of the obligor's election not to continue the open-end account; and

(2) the following statement printed in not less than 10-point type or computer equivalent:

"YOU MAY TERMINATE THIS AGREEMENT IF YOU DO NOT WISH TO PAY THE NEW RATE."

(d) An obligor is considered to have agreed to a change under this section if the creditor mails a notice required by this section to the obligor's most recent address shown in the creditor's records and:

(1) the obligor chooses to retain the privilege of using the open-end account;

(2) the obligor or a person authorized by the obligor accepts or uses an extension of credit after the fifth day after the date on which the notice is mailed; or

(3) the obligor does not notify the creditor in writing before the 21st day after the date on which the notice is mailed that the obligor does not wish to continue to use the open-end account.

(e) An obligor who rejects a rate change in accordance with this section is entitled to pay the balance on the open-end account at the rate and over the period in effect immediately before the date of the proposed change and under the same minimum payment terms provided by the agreement. Rejection of a new rate does not accelerate payment of the balance due.

(f) The procedure provided by this section for changing the terms of an agreement is in addition to other means of amending the agreement provided by law.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.104. DISCLOSURE OF DECREASE IN INTEREST RATE NOT REQUIRED ON OPEN-END ACCOUNTS INVOLVING CREDIT CARD TRANSACTION OR MERCHANT DISCOUNT. On an open-end account authorized under Section

342.455 or 346.003, in connection with which credit card transactions are authorized or a merchant discount is imposed or received by the creditor and on which interest is charged under this chapter, the creditor is not required to disclose a decrease in the applicable interest rate.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.105. OPEN-END ACCOUNT: DISCLOSURE OF CERTAIN RATE VARIATIONS. (a) Except as provided by Subsection (b), a variation in an interest rate on an account resulting from operation of the previously disclosed index, formula, or provision of law is not required to be disclosed under Section 303.101 or 303.103.

(b) Except as inconsistent with federal law, the creditor on an open-end account agreement that provides for a variable interest rate according to an index, formula, or provision of law, that is primarily for personal, family, or household use, and that is subject to this chapter shall give to the obligor notice of a change in the rate resulting from operation of the index, formula, or provision of law. The notice must be given:

(1) by a document mailed on or before the beginning of the first cycle for which the change becomes effective; or

(2) on or with:

(A) the billing statement for a billing cycle that precedes the cycle for which the change becomes effective, if the account is covered by Section 303.006(c); or

(B) any billing statement, if the account is not covered by Section 303.006(c).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.106. OPEN-END ACCOUNT: CEILING FOR PLAN OR ARRANGEMENT. If a creditor implements a quarterly or annualized ceiling for a majority of the creditor's open-end accounts that are under a particular plan or arrangement and that are for obligors in this state, that ceiling is also the ceiling for all open-end accounts that are opened or activated under that plan for obligors in

this state during the period that the election is in effect.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

SUBCHAPTER C. PROVISIONS APPLICABLE TO CERTAIN CONSUMER LOANS AND SECONDARY MORTGAGE LOANS

Sec. 303.201. LICENSE REQUIRED. A person engaged in the business of making loans for personal, family, or household use for which the rate is authorized under this chapter must obtain a license under Chapter 342 unless the person is not required to obtain a license under Section 342.051.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.04, eff. September 1, 2005.

Sec. 303.202. APPLICABILITY OF SUBTITLE B. Except as inconsistent with this chapter:

(1) a person engaged in the business of extending open-end credit primarily for personal, family, or household use and who charges on an open-end account a rate or amount under authority of this chapter is subject to the applicable chapter in Subtitle B; and

(2) a party to an account described by Subdivision (1) or the party's assignees have all the rights, duties, and obligations under that applicable chapter.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.203. AUTOMOBILE CLUB MEMBERSHIP OFFERED IN CONNECTION WITH A LOAN. (a) A lender may, at the time or after a loan is made, offer to sell to the borrower and finance in a loan contract subject to this subtitle a charge for an automobile club membership.

(b) The lender may not require the purchase of the membership authorized under Subsection (a) as a condition for approval of the

loan.

(c) The borrower shall provide the lender with written acknowledgment of the borrower's intent to purchase the membership.

(d) The amount charged for a membership as authorized by Subsection (a) must be reasonable.

Added by Acts 2005, 79th Leg., Ch. 252 (H.B. 1088), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1182 (H.B. 3453), Sec. 4, eff. September 1, 2011.

SUBCHAPTER D. LIMITATIONS ON APPLICABILITY OF CHAPTER

Sec. 303.301. AGREEMENT TO WHICH CHAPTER DOES NOT APPLY. The rate ceilings provided by this chapter do not apply to an agreement:

(1) under which credit is extended by the seller, or an owner, subsidiary, or corporate affiliate of the seller, for a transaction governed by Chapter 601, Business & Commerce Code; and

(2) that is secured by a lien on the obligor's homestead.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.16, eff. April 1, 2009.

Sec. 303.302. REQUIREMENTS INCONSISTENT WITH FEDERAL LAW. (a) A person is not required to comply with a disclosure or notice requirement of this chapter that is inconsistent with federal statute or regulation.

(b) A creditor may modify a disclosure or notice requirement of this chapter to conform to federal law.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

SUBCHAPTER E. ENFORCEMENT

Sec. 303.401. WHEN ACT OR OMISSION NOT VIOLATION. An act or

omission does not violate this title if the act or omission conforms to an interpretation of this title that is in effect at the time of the act or omission and that was made by:

(1) the consumer credit commissioner under Section 14.108; or

(2) an appellate court of this state or the United States.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.402. PENALTY FOR VIOLATION OF CHAPTER FOR CERTAIN CONTRACTS SUBJECT TO SUBTITLE B. (a) A person who contracts for, charges, or receives under a contract subject to Chapter 342, 345, 346, 347, 348, or 353, including a contract for an open-end account, a rate or amount of time price differential that exceeds the maximum applicable rate or amount authorized by the applicable chapter or this chapter is subject to a penalty for that violation determined under Chapter 349.

(b) For a contract described by Subsection (a) that contains a rate or amount authorized under this chapter, the failure to perform a duty or comply with a prohibition provided by this chapter is subject to Chapter 349 as if this chapter were in Subtitle B.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 4, eff. September 1, 2011.

Sec. 303.403. PENALTY FOR VIOLATION OF CEILING IN CERTAIN CONTRACTS. A written contract, other than a contract to which Section 303.402 applies, that directly or indirectly provides for a rate that exceeds the rate authorized by this chapter and that is not otherwise authorized by law, is subject to the penalty prescribed by Chapter 305.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.404. ENFORCEMENT BY CONSUMER CREDIT COMMISSIONER. Subject to Subchapter B, Chapter 341, the consumer credit commissioner shall enforce Subtitles B and C as they apply to contracts subject to those chapters.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.405. EXAMINATION OF RECORDS; INSPECTIONS; RULES. (a) Section 342.552 applies to a transaction:

(1) that is made by a person who holds a license under Chapter 342;

(2) that is subject to Chapter 342 or 346; and

(3) the rate of which is authorized by this chapter.

(b) Subchapter L, Chapter 342, applies to a loan:

(1) that is subject to Chapter 342; and

(2) the rate of which is authorized by this chapter.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.406. ENFORCEMENT BY CREDIT UNION COMMISSIONER. The credit union commissioner shall enforce this chapter as it applies to contracts subject to Subtitle D, Title 3.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.407. ENFORCEMENT BY TEXAS DEPARTMENT OF INSURANCE. The Texas Department of Insurance shall enforce this chapter as it applies to contracts subject to Chapter 651, Insurance Code.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.113, eff. September 1, 2005.

SUBCHAPTER F. EFFECT ON OTHER STATUTES OF USING OPTIONAL RATE

Sec. 303.501. APPLICABILITY OF CREDIT UNION ACT. Except as inconsistent with this chapter:

(1) a person subject to Subtitle D, Title 3, who contracts for, charges, or receives a rate or amount authorized by this chapter remains subject to that subtitle; and

(2) a party to a transaction described by Subdivision (1) has all the rights provided by that subtitle.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 303.502. APPLICABILITY OF CHAPTER 24, INSURANCE CODE. (a) Except as inconsistent with this chapter:

(1) a person subject to Chapter 651, Insurance Code, who contracts for, charges, or receives an interest rate authorized by this chapter remains subject to that chapter; and

(2) a party to an insurance premium finance agreement, including an agreement for an open-end account, has all the rights provided by Chapter 651, Insurance Code.

(b) The licensing requirements of Chapter 342 do not apply to a transaction described by Subsection (a)(1). The penalty provisions of this title do not apply to a transaction described by Subsection (a)(1).

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.114, eff. September 1, 2005.

CHAPTER 304. JUDGMENT INTEREST

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 304.001. INTEREST RATE REQUIRED IN JUDGMENT. A money judgment of a court in this state must specify the postjudgment interest rate applicable to that judgment.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 304.002. JUDGMENT INTEREST RATE: INTEREST RATE OR TIME PRICE DIFFERENTIAL IN CONTRACT. A money judgment of a court of this state on a contract that provides for interest or time price differential earns postjudgment interest at a rate equal to the lesser of:

(1) the rate specified in the contract, which may be a variable rate; or

(2) 18 percent a year.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 304.003. JUDGMENT INTEREST RATE: INTEREST RATE OR TIME PRICE DIFFERENTIAL NOT IN CONTRACT. (a) A money judgment of a court of this state to which Section 304.002 does not apply, including court costs awarded in the judgment and prejudgment interest, if any, earns postjudgment interest at the rate determined under this section.

(b) On the 15th day of each month, the consumer credit commissioner shall determine the postjudgment interest rate to be applied to a money judgment rendered during the succeeding calendar month.

(c) The postjudgment interest rate is:

(1) the prime rate as published by the Board of Governors of the Federal Reserve System on the date of computation;

(2) five percent a year if the prime rate as published by the Board of Governors of the Federal Reserve System described by Subdivision (1) is less than five percent; or

(3) 15 percent a year if the prime rate as published by the Board of Governors of the Federal Reserve System described by Subdivision (1) is more than 15 percent.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 204, Sec. 6.01, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 676, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 387 (S.B. 1450), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 7.01, eff. September 1, 2005.

Sec. 304.004. PUBLICATION OF JUDGMENT INTEREST RATE. The consumer credit commissioner shall send to the secretary of state the postjudgment interest rate for publication, and the secretary shall publish the rate in the Texas Register.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 304.005. ACCRUAL OF JUDGMENT INTEREST. (a) Except as provided by Subsection (b), postjudgment interest on a money judgment of a court in this state accrues during the period beginning on the date the judgment is rendered and ending on the date the judgment is satisfied.

(b) If a case is appealed and a motion for extension of time to file a brief is granted for a party who was a claimant at trial, interest does not accrue for the period of extension.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 304.006. COMPOUNDING OF JUDGMENT INTEREST. Postjudgment interest on a judgment of a court in this state compounds annually.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 304.007. JUDICIAL NOTICE OF JUDGMENT INTEREST RATE. A court of this state shall take judicial notice of a published postjudgment interest rate.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

SUBCHAPTER B. PREJUDGMENT INTEREST IN WRONGFUL DEATH, PERSONAL INJURY, OR PROPERTY DAMAGE CASE

Sec. 304.101. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a wrongful death, personal injury, or property damage case of a court of this state.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 304.102. PREJUDGMENT INTEREST REQUIRED IN CERTAIN CASES. A judgment in a wrongful death, personal injury, or property damage case earns prejudgment interest.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 304.103. PREJUDGMENT INTEREST RATE FOR WRONGFUL DEATH, PERSONAL INJURY, OR PROPERTY DAMAGE CASE. The prejudgment interest rate is equal to the postjudgment interest rate applicable at the time of judgment.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 304.104. ACCRUAL OF PREJUDGMENT INTEREST. Except as provided by Section 304.105 or 304.108, prejudgment interest accrues on the amount of a judgment during the period beginning on the earlier of the 180th day after the date the defendant receives written notice of a claim or the date the suit is filed and ending on the day preceding the date judgment is rendered. Prejudgment interest is computed as simple interest and does not compound.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 304.1045. FUTURE DAMAGES. Prejudgment interest may not be assessed or recovered on an award of future damages.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 6.02, eff. Sept. 1, 2003.

Sec. 304.105. EFFECT OF SETTLEMENT OFFER ON ACCRUAL OF PREJUDGMENT INTEREST. (a) If judgment for a claimant is equal to or less than the amount of a settlement offer of the defendant, prejudgment interest does not accrue on the amount of the judgment during the period that the offer may be accepted.

(b) If judgment for a claimant is more than the amount of a settlement offer of the defendant, prejudgment interest does not accrue on the amount of the settlement offer during the period that the offer may be accepted.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 304.106. SETTLEMENT OFFER REQUIREMENTS TO PREVENT PREJUDGMENT INTEREST ACCRUAL. To prevent the accrual of prejudgment interest under this subchapter, a settlement offer must be in writing and delivered to the claimant or the claimant's attorney or representative.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 304.107. VALUE OF SETTLEMENT OFFER FOR COMPUTING PREJUDGMENT INTEREST. If a settlement offer does not provide for cash payment at the time of settlement, the amount of the settlement offer for the purpose of computing prejudgment interest is the cost or fair market value of the settlement offer at the time it is made.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

SUBCHAPTER C. OTHER PREJUDGMENT INTEREST PROVISIONS

Sec. 304.201. PREJUDGMENT INTEREST RATE FOR CONDEMNATION CASE. The prejudgment interest rate in a condemnation case is equal to the

postjudgment interest rate at the time of judgment and is computed as simple interest.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

SUBCHAPTER D. EXCEPTIONS TO APPLICATION OF CHAPTER

Sec. 304.301. EXCEPTION FOR DELINQUENT TAXES. This chapter does not apply to a judgment:

(1) in favor of a taxing unit in a delinquent tax suit under Subchapter C, Chapter 33, Tax Code; or

(2) that earns interest at a rate set by Title 2, Tax Code.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 304.302. EXCEPTION FOR DELINQUENT CHILD SUPPORT. This chapter does not apply to interest that accrues on an amount of unpaid child support under Section 157.265, Family Code.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

CHAPTER 305. PENALTIES AND REMEDIES

SUBCHAPTER A. CIVIL LIABILITY; CRIMINAL PENALTY

Sec. 305.001. LIABILITY FOR USURIOUS INTEREST. (a) A creditor who contracts for, charges, or receives interest that is greater than the amount authorized by this subtitle in connection with a transaction for personal, family, or household use is liable to the obligor for an amount that is equal to the greater of:

(1) three times the amount computed by subtracting the amount of interest allowed by law from the total amount of interest contracted for, charged, or received; or

(2) $2,000 or 20 percent of the amount of the principal, whichever is less.

(a-1) A creditor who contracts for or receives interest that is greater than the amount authorized by this subtitle in connection with a commercial transaction is liable to the obligor for an amount

that is equal to three times the amount computed by subtracting the amount of interest allowed by law from the total amount of interest contracted for or received.

(b) This section applies only to a contract or transaction subject to this subtitle.

(c) A creditor who charges or receives interest in excess of the amount contracted for, but not in excess of the maximum amount authorized by law, is not subject to penalties for usurious interest but may be liable for other remedies and relief as provided by law.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.05, eff. September 1, 2005.

Sec. 305.002. ADDITIONAL LIABILITY FOR MORE THAN TWICE AUTHORIZED RATE OF INTEREST. (a) In addition to the amount determined under Section 305.001, a creditor who charges and receives interest that is greater than twice the amount authorized by this subtitle is liable to the obligor for:

(1) the principal amount on which the interest is charged and received; and

(2) the interest and all other amounts charged and received.

(b) This section applies only to a contract or transaction for personal, family, or household use subject to this subtitle.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.06, eff. September 1, 2005.

Sec. 305.003. LIABILITY FOR USURIOUS LEGAL INTEREST. (a) A creditor who charges or receives legal interest that is greater than the amount authorized by this subtitle is liable to the obligor for an amount that is equal to the greater of:

(1) three times the amount computed by subtracting the

amount of legal interest allowed by law from the total amount of interest charged or received; or

(2) $2,000 or 20 percent of the amount of the principal, whichever is less.

(b) This section applies only to a transaction subject to this subtitle.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 305.004. ADDITIONAL LIABILITY FOR MORE THAN TWICE AUTHORIZED RATE OF LEGAL INTEREST. (a) In addition to the amount determined under Section 305.003, a creditor who charges and receives legal interest that is greater than twice the amount authorized by this subtitle is liable to the obligor for:

(1) the principal amount on which the interest is charged and received; and

(2) the interest and all other amounts charged and received.

(b) This section applies only to a transaction subject to this subtitle.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 305.005. ATTORNEY'S FEES. A creditor who is liable under Section 305.001 or 305.003 is also liable to the obligor for reasonable attorney's fees set by the court.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 305.006. LIMITATION ON FILING SUIT. (a) An action under this chapter must be brought within four years after the date on which the usurious interest was contracted for, charged, or received. The action must be brought in the county in which:

(1) the transaction was entered into;

(2) the usurious interest was charged or received;

(3) the creditor resides at the time of the cause of action, if the creditor is an individual;

(4) the creditor maintains its principal office, if the creditor is not an individual; or

(5) the obligor resides at the time of the accrual of the cause of action.

(b) Not later than the 61st day before the date an obligor files a suit seeking penalties for a transaction in which a creditor has contracted for, charged, or received usurious interest, the obligor shall give the creditor written notice stating in reasonable detail the nature and amount of the violation.

(c) A creditor who receives a notice under this section may correct the violation as provided by Section 305.103 during the period beginning on the date the notice is received and ending on the 60th day after that date. A creditor who corrects a violation as provided by this section is not liable to an obligor for the violation.

(d) With respect to a defendant filing a counterclaim action alleging usurious interest in an original action by the creditor, the defendant shall provide notice complying with Subsection (b) at the time of filing the counterclaim and, on application of the creditor to the court, the action is subject to abatement for a period of 60 days from the date of the court order. During the abatement period the creditor may correct a violation. As part of the correction of the violation, the creditor shall offer to pay the obligor's reasonable attorney's fees as determined by the court based on the hours reasonably expended by the obligor's counsel with regard to the alleged violation before the abatement. A creditor who corrects a violation as provided by this subsection is not liable to an obligor for the violation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.07, eff. September 1, 2005.

Sec. 305.007. PENALTIES EXCLUSIVE. The penalties provided by this chapter are the only penalties for violation of this subtitle

for contracting for, charging, or receiving interest in an amount that produces a rate in excess of the maximum rate allowed by law. Common law penalties do not apply.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 305.008. CRIMINAL PENALTY. (a) A person commits an offense if the person contracts for, charges, or receives interest on a transaction for personal, family, or household use that is greater than twice the amount authorized by this subtitle.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $1,000.

(c) Each contract or transaction that violates this section is a separate offense.

(d) This section applies only to a contract or transaction subject to this subtitle.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

SUBCHAPTER B. EXCEPTION FROM LIABILITY

Sec. 305.101. ACCIDENTAL AND BONA FIDE ERROR. A creditor is not subject to penalty under this chapter for any usurious interest that results from an accidental and bona fide error.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 305.102. LEGAL INTEREST DURING INTEREST-FREE PERIOD. A person is not liable to an obligor solely because the person charges or receives legal interest before the 30th day after the date on which the debt is due.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 305.103. CORRECTION OF VIOLATION. (a) A creditor is not liable to an obligor for a violation of this subtitle if:

(1) not later than the 60th day after the date the creditor actually discovered the violation, the creditor corrects the violation as to that obligor by taking any necessary action and making any necessary adjustment, including the payment of interest on a refund, if any, at the applicable rate provided for in the contract of the parties; and

(2) the creditor gives written notice to the obligor of the violation before the obligor gives written notice of the violation or files an action alleging the violation.

(b) For the purposes of Subsection (a), a violation is actually discovered at the time of the discovery of the violation in fact and not at the time when an ordinarily prudent person, through reasonable diligence, could or should have discovered or known of the violation. Actual discovery of a violation in one transaction may constitute actual discovery of the same violation in other transactions if the violation is of such a nature that it would necessarily be repeated and would be clearly apparent in the other transactions without the necessity of examining all the other transactions.

(c) For purposes of Subsection (a), written notice is given when the notice is delivered to the person or to the person's authorized agent or attorney of record personally, by telecopier, or by United States mail to the address shown on the most recent documents in the transaction. Deposit of the notice as registered or certified mail in a postage paid, properly addressed wrapper in a post office or official depository under the care and custody of the United States Postal Service is prima facie evidence of the delivery of the notice to the person to whom the notice is addressed.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 305.104. CORRECTION EXCEPTION AVAILABLE TO ALL SIMILARLY SITUATED. If in a single transaction more than one creditor may be liable for a violation of this subtitle, compliance with Section 305.103 by any of those creditors entitles each to the same protection provided by that section.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1,

1999.

Sec. 305.105. AMOUNTS PAYABLE PURSUANT TO A FINAL JUDGMENT. A creditor is not liable to an obligor for a violation of this subtitle if the creditor receives interest that has been awarded pursuant to a final judgment that is no longer subject to modification or reversal.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

CHAPTER 306. COMMERCIAL TRANSACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 306.001. DEFINITIONS. In this chapter:

(1) "Account purchase transaction" means an agreement under which a person engaged in a commercial enterprise sells accounts, instruments, documents, or chattel paper subject to this subtitle at a discount, regardless of whether the person has a repurchase obligation related to the transaction.

(2) "Affiliate of an obligor" means a person who directly or indirectly, or through one or more intermediaries or other entities, owns an interest in, controls, is controlled by, or is under common control with the obligor, or a person in which the obligor directly or indirectly, or through one or more intermediaries or other entities, owns an interest. In this subdivision "control" means the possession, directly or indirectly, or with one or more other persons, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(3) "Asset-backed securities" means debt obligations or certificates of beneficial ownership that:

(A) are a part of a single issue or single series of securities in an aggregate of $1 million or more and issuable in one or more classes;

(B) are secured by a pledge of, or represent an undivided ownership interest in:

(i) one or more fixed or revolving financial assets that by their terms convert into cash within a definite period; and

(ii) rights or other assets designed to assure the

servicing or timely distribution of proceeds to security holders; and

(C) are issued for a business, commercial, agricultural, investment, or similar purpose by a pass-through entity.

(4) "Business entity" means a partnership, corporation, joint venture, limited liability company, or other business organization or business association, however organized.

(5) "Commercial loan" means a loan that is made primarily for business, commercial, investment, agricultural, or similar purposes. The term does not include a loan made primarily for personal, family, or household use.

(6) "Guaranty" means an agreement under which a person:

(A) assumes, guarantees, or otherwise becomes primarily or contingently liable for the payment or performance of an obligation of another person;

(B) provides security, by creation of a lien or security interest or otherwise, for the payment or performance of an obligation of another person; or

(C) agrees to purchase or to advance consideration to purchase an obligation of another person or property that is security for the payment or performance of the obligation.

(7) "Pass-through entity" means a business entity, association, grantor or common-law trust under state law, or segregated pool of assets under federal tax law that, on the date of original issuance of asset-backed securities, does not have significant assets other than:

(A) assets pledged to or held for the benefit of holders of the asset-backed securities; or

(B) assets pledged to or held for the benefit of holders of other asset-backed securities previously issued.

(8) "Prepayment premium" means compensation paid by or that is or will become due from an obligor to a creditor solely as a result or condition of the payment or maturity of all or a portion of the principal amount of a loan before its stated maturity or a regularly scheduled date of payment, as a result of the obligor's election to pay all or a portion of the principal amount before its stated maturity or a regularly scheduled date of payment.

(9) "Qualified commercial loan":

(A) means:

(i) a commercial loan in which one or more persons as part of the same transaction lends, advances, borrows, or receives, or is obligated to lend or advance or entitled to borrow or receive, money or credit with an aggregate value of:

(a) $3 million or more if the commercial loan is secured by real property; or

(b) $250,000 or more if the commercial loan is not secured by real property and, if the aggregate value of the commercial loan is less than $500,000, the loan documents contain a written certification from the borrower that:

(1) the borrower has been advised by the lender to seek the advice of an attorney and an accountant in connection with the commercial loan; and

(2) the borrower has had the opportunity to seek the advice of an attorney and accountant of the borrower's choice in connection with the commercial loan; and

(ii) a renewal or extension of a commercial loan described by Paragraph (A), regardless of the principal amount of the loan at the time of the renewal or extension; and

(B) does not include a commercial loan made for the purpose of financing a business licensed by the Motor Vehicle Board of the Texas Department of Motor Vehicles under Section 2301.251(a), Occupations Code.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 531, Sec. 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.772, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.08, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3D.01, eff. September 1, 2009.

Sec. 306.002. INTEREST; APPLICATION OF OTHER PROVISIONS OF SUBTITLE. (a) A creditor may contract for, charge, and receive from an obligor on a commercial loan a rate or amount of interest that does not exceed the applicable ceilings computed in accordance with Chapter 303.

(b) All other applicable provisions, remedies, and penalties of this subtitle apply to a commercial loan unless this chapter expressly provides otherwise.

(c) The provisions of this chapter providing authorizations with respect to certain transactions do not affect or negatively impact any rules of law applicable either to other transactions subject to this chapter or to any transactions not subject to this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 973 (H.B. 1979), Sec. 1, eff. September 1, 2013.

Sec. 306.003. COMPUTATION OF LOAN TERMS. (a) In addition to any other method otherwise permitted under this title, a creditor and an obligor may agree to compute an annual interest rate on a commercial loan on a 365/360 basis or a 366/360 basis, as applicable, determined by applying the ratio of the percentage annual interest rate agreed to by the parties over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. A creditor and an obligor may also agree to compute the term and rate of a commercial loan based on a 360-day year consisting of 12 30-day months. Each interest rate ceiling under Chapters 302 and 303 expressed as a rate per year may mean a rate per year computed in accordance with this section.

(b) A creditor and an obligor may agree that one or more payments of interest due or that are scheduled to be due with respect to a commercial loan may be paid on a periodic basis when due wholly or partly by adding to the principal balance of the loan the amount of unpaid interest due or scheduled to be due, regardless of whether the interest added to the principal balance is evidenced by an existing or a separate promissory note or other agreement. On and after the date an amount of interest is added to the principal balance under this subsection, that amount no longer constitutes interest, but instead constitutes part of the principal for purposes of calculating the maximum lawful rate or amount of interest on the

loan.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 973 (H.B. 1979), Sec. 2, eff. September 1, 2013.

Sec. 306.004. DETERMINING RATES OF INTEREST BY SPREADING. (a) To determine whether a commercial loan is usurious, the interest rate is computed by amortizing or spreading, using the actuarial method during the stated term of the loan, all interest at any time contracted for, charged, or received in connection with the loan.

(b) If a commercial loan is paid in full before the end of the stated term of the loan and the amount of interest received for the period that the loan exists exceeds the amount that produces the maximum rate authorized by law for that period, the lender shall:

(1) refund the amount of the excess to the borrower; or

(2) credit the amount of the excess against amounts owing under the loan.

(c) A lender who complies with Subsection (b) is not subject to any of the penalties provided by law for contracting for, charging, or receiving interest in excess of the maximum rate authorized.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 306.005. PREPAYMENT PREMIUMS AND SIMILAR AMOUNTS. With respect to a loan subject to this chapter, a creditor and an obligor may agree to a prepayment premium, make-whole premium, or similar fee or charge, whether payable in the event of voluntary prepayment, involuntary prepayment, acceleration of maturity, or other cause that involves premature termination of the loan, and those amounts do not constitute interest.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.12, eff.

September 1, 2005.

Sec. 306.006. CERTAIN AUTHORIZED CHARGES ON COMMERCIAL LOANS. In addition to the interest authorized by this chapter, the parties to a commercial loan may agree and stipulate for:

(1) a delinquency charge on the amount of any installment or other amount in default for a period of not less than 10 days in an amount not to exceed five percent of the total amount of the installment; and

(2) a returned check fee in an amount that does not exceed the maximum fee authorized in Section 3.506, Business & Commerce Code, on any check, draft, order, or other instrument or form of remittance that is returned unpaid or dishonored for any reason.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.13, eff. September 1, 2005.

Sec. 306.007. GUARANTY, ASSUMPTION, PAYMENT, OR OTHER AGREEMENT. With respect to a commercial loan, an obligor may be required to assume, pay, or provide a guaranty of another person's existing or future obligation as a condition of the obligor's own use, forbearance, or detention of money. The amount of the other person's obligation required to be assumed, paid, or guaranteed does not constitute interest with respect to any obligation of the obligor.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.14, eff. September 1, 2005.

SUBCHAPTER B. PROVISIONS RELATING TO SPECIFIC TYPES OF COMMERCIAL LOANS OR TRANSACTIONS

Sec. 306.101. QUALIFIED COMMERCIAL LOAN. (a) The parties to a qualified commercial loan agreement may contract for a rate or amount of interest that does not exceed the applicable rate ceiling.

(b) The parties to a qualified commercial loan agreement may

contract for the following charges:

(1) a discount or commission that an obligor has paid or agreed to pay to one or more underwriters of securities issued by the obligor;

(2) an option or right to exchange, redeem, or convert all or a portion of the principal amount of the loan, or interest on the principal amount, for or into capital stock or other equity securities of an obligor or of an affiliate of an obligor;

(3) an option or right to purchase capital stock or other equity securities of an obligor or of an affiliate of an obligor;

(4) an option or other right created by contract, conveyance, or otherwise, to participate in or own a share of the income, revenues, production, or profits:

(A) of an obligor or of an affiliate of an obligor;

(B) of any segment of the business or operations of an obligor or of an affiliate of an obligor; or

(C) derived or to be derived from ownership rights of an obligor or of an affiliate of an obligor in property, including any proceeds of the sale or other disposition of ownership rights; or

(5) compensation realized as a result of the receipt, exercise, sale, or other disposition of an option or other right described by this subsection.

(c) A charge under Subsection (b) is not interest.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 306.102. ASSET-BACKED SECURITIES TRANSACTION. An amount that is paid, passed through, or obligated to be paid or to be passed through in connection with asset-backed securities or that is not paid as a result of a discounted sale price to the holders of asset-backed securities by a pass-through entity is not interest. This section does not affect interest that is agreed on and fixed by the parties to a written contract and paid, charged, or received on the ultimate underlying assets pledged to or held for the benefit of holders of asset-backed securities.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 306.103. ACCOUNT PURCHASE TRANSACTION. (a) An amount of a discount in, or charged under, an account purchase transaction is not interest.

(b) For the purposes of this chapter, the parties' characterization of an account purchase transaction as a purchase is conclusive that the account purchase transaction is not a transaction for the use, forbearance, or detention of money.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

CHAPTER 307. COLLATERAL PROTECTION INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 307.001. DEFINITIONS. In this chapter:

(1) "Collateral" means property pledged or used to secure payment, repayment, or performance under a credit or lease agreement, including personal property, real property, fixtures, inventory, receivables, rights, or privileges.

(2) "Collateral protection insurance" means insurance coverage described by Section 307.051.

(3) "Credit agreement" means a written document that sets forth the terms of a credit transaction.

(4) "Credit transaction" means a transaction with terms that require the payment of money, goods, services, property, rights, or privileges on a future date and in which the obligation for payment is secured by collateral.

(5) "Creditor" means a person who is a lender of money or a vendor or lessor of goods, services, property, rights, or privileges for which a payment is arranged through a credit transaction and includes any successor to the rights, title, interest, or liens of the lender, vendor, or lessor.

(6) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit agreement. The term does not include a person who is not a primary obligor under a credit transaction or who is not jointly and severally liable with the debtor for the obligation.

(7) "Title insurance" means insurance that may be issued only by persons regulated under Title 11, Insurance Code, and that insures:

(A) a lender or owner against loss caused by:

(i) defective title held by the mortgagor or owner or insured;

(ii) unknown mortgages or defective recording of mortgages or liens on real property;

(iii) failure of any person to pay ad valorem taxes resulting in a lien; or

(iv) failure to research properly title, taxes, liens, or other matters relative to the validity of loans or liens secured by real property or insurance; or

(B) the validity, enforceability, or priority of any lien or title on real property.

Added by Acts 2001, 77th Leg., ch. 726, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.115, eff. September 1, 2005.

SUBCHAPTER B. REQUIREMENTS FOR COLLATERAL PROTECTION INSURANCE

Sec. 307.051. COLLATERAL PROTECTION INSURANCE. (a) Collateral protection insurance is insurance coverage that:

(1) is purchased by a creditor after the date of a credit agreement;

(2) provides monetary protection against loss of or damage to the collateral or against liability arising out of the ownership or use of the collateral; and

(3) is purchased according to the terms of a credit agreement as a result of a debtor's failure to provide evidence of insurance or failure to obtain or maintain insurance covering the collateral, with the costs of the collateral protection insurance, including interest and any other charges incurred by the creditor in connection with the placement of collateral protection insurance, payable by a debtor.

(b) Collateral protection insurance includes insurance coverage that is purchased to protect:

(1) only the interest of the creditor; or

(2) both the interest of the creditor and some or all of the interest of a debtor.

(c) The term of a collateral protection insurance policy may be:

(1) not greater than 12 months; or

(2) the remaining term of the credit transaction if the remaining term is less than or equal to 24 months.

(d) The effective date of coverage for collateral protection insurance may be earlier than the date of issuance of the policy. The effective date may not be earlier than the date the collateral became uninsured.

(e) A premium for collateral protection insurance covering collateral other than real property may not be based on an amount that exceeds the actual amount of unpaid indebtedness of the debtor as of the effective date of the policy. This condition applies without regard to whether the coverage under the policy limits the insurer's liability to:

(1) the amount of unpaid debt;

(2) the cash value of the collateral; or

(3) the cost of repair of the collateral.

(e-1) With respect to collateral protection insurance covering real property, a creditor, at the creditor's option, may obtain insurance that will cover either the replacement cost of improvements or the amount of unpaid indebtedness, subject to policy limits. The debtor shall be obligated to reimburse the creditor for the premium, finance charges, and any other charges incurred by the creditor in connection with the placement of the insurance. The creditor may use the previous evidence of insurance coverage furnished by the debtor to determine the sufficient level of replacement cost coverage to be provided.

(f) Collateral protection insurance does not include insurance coverage that:

(1) is purchased by the creditor for which the debtor is not charged;

(2) is purchased at the inception of a credit transaction in which the debtor is a party or to which the debtor agrees, whether or not costs are included in a payment plan under the credit transaction;

(3) is maintained by the creditor for the protection of collateral that comes into the possession or control of the creditor

through foreclosure, repossession, or a similar event;

(4) is credit insurance, mortgage protection insurance, insurance issued to cover the life or health of the debtor, or any other insurance maintained to cover the inability or failure of the debtor to make payment under the credit agreement;

(5) is title insurance;

(6) is flood insurance required to be placed by creditors under Section 102, National Flood Insurance Act of 1968 (42 U.S.C. Section 4012a); or

(7) is insurance on a commercial vehicle securing a retail installment contract under Chapter 353.

Added by Acts 2001, 77th Leg., ch. 726, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 1219, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 238 (S.B. 1965), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 5, eff. September 1, 2011.

Sec. 307.052. CREDITOR DUTIES. (a) A creditor who requires collateral protection insurance that is paid for directly or indirectly by a debtor may place collateral protection insurance if:

(1) the debtor has entered into a credit transaction with the creditor for which a credit agreement exists;

(2) the credit agreement requires the debtor to maintain insurance on the collateral; and

(3) a notice has been included in the credit agreement or a separate document provided to the debtor at the time the credit agreement is executed that states that:

(A) the debtor is required to:

(i) keep the collateral insured against damage in the amount the creditor specifies;

(ii) purchase the insurance from an insurer that is authorized to do business in this state or an eligible surplus lines insurer; and

(iii) name the creditor as the person to be paid under the policy in the event of a loss;

(B) the debtor must, if required by the creditor, deliver to the creditor a copy of the policy and proof of the payment of premiums; and

(C) if the debtor fails to meet any requirement listed in Paragraph (A) or (B), the creditor may obtain collateral protection insurance on behalf of the debtor at the debtor's expense.

(b) Not later than the 31st day after the date the collateral protection insurance is charged to the debtor, the creditor, by prepaid, first class mail, shall mail to each debtor at the last known address on file with the creditor a notice that states:

(1) that the creditor has purchased or will purchase collateral protection insurance on behalf of the debtor and at the debtor's expense as provided by the credit agreement;

(2) the type of insurance that the creditor has obtained or will obtain, the extent of the coverage, and whose interest the policy protects;

(3) the beginning and ending dates of the policy period;

(4) the total cost of the policy to the debtor;

(5) the annual interest rate charged on the cost of insurance if that rate is different from the rate charged in the related credit transaction;

(6) the manner in which the debtor may pay the cost of insurance, interest, or finance charge relating to the purchase of the collateral protection insurance;

(7) at the option of the creditor, other repayment options to which the debtor has agreed in the original credit transaction; and

(8) if collateral protection insurance covering real property is obtained under Section 307.051(e-1):

(A) that coverage may be available to the debtor through the Texas FAIR plan at a lower cost; and

(B) contact information about the Texas FAIR plan.

(c) The creditor shall mail the notice required under Subsection (b) to each person who is a cosigner or guarantor to the debt, if the last known address of that person differs from the last known address of the debtor.

(d) The creditor may delegate the notice requirements under Subsections (b) and (c) to the insurer or the insurer's agent.

(e) The notice required by Subsection (b) must be printed in type that is:

(1) underlined;
(2) in all capital letters;
(3) in all bold letters; or
(4) otherwise conspicuous.

(f) If the required notice to any debtor, cosigner, or guarantor is returned to the creditor undelivered, the creditor shall:

(1) locate the person by using the procedures the creditor regularly uses for locating debtors; and
(2) mail a second notice at the time the person is located.

(g) The terms for payment of the costs of the collateral protection insurance, including interest and any other charges actually incurred that the creditor may impose in connection with the placement of the collateral protection insurance, must include one or more of the following:

(1) a final balloon payment on or before the 30th day after the date of the last scheduled payment required by the credit agreement;
(2) full amortization over the term of the credit transaction, the term of the collateral protection insurance coverage, or the term for which the amortization is used by the creditor; or
(3) any other repayment terms agreed to by a debtor in the original credit transaction.

Added by Acts 2001, 77th Leg., ch. 726, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 1219, Sec. 2, eff. June 20, 2003.

Sec. 307.053. AMORTIZATION OF DEBT. If any form of amortization is used by the creditor, the creditor shall send to each debtor notice of the terms of the amortization and any change in the debtor's periodic payment.

Added by Acts 2001, 77th Leg., ch. 726, Sec. 1, eff. Sept. 1, 2001.

Sec. 307.054. CANCELLATION OF COLLATERAL PROTECTION INSURANCE. A debtor may at any time cause the cancellation of collateral protection insurance by providing proper evidence to the creditor

that the debtor has obtained insurance as required by the credit agreement. If a debtor provides the creditor with proper evidence that the debtor had insurance on the collateral as required by the credit agreement on or before the date the collateral protection insurance is effective and that the debtor continues to have insurance on the collateral as required by the credit agreement, the creditor shall cancel the insurance that it purchased and may not charge the debtor any costs, interest, or other charges in connection with the insurance.

Added by Acts 2001, 77th Leg., ch. 726, Sec. 1, eff. Sept. 1, 2001.

Sec. 307.055. REFUND OF UNEARNED PREMIUMS. (a) On the date the collateral protection insurance is canceled or expires, the amount of unearned premiums, as computed by the Texas Automobile Rules and Rating Manual for collateral to which that manual applies and pro rata for all other types of collateral, shall be refunded to the creditor. Except as otherwise provided in Subsection (b), not later than the 14th day after the date the creditor receives the refund, the creditor shall distribute a refund of unearned premiums by any method selected by the creditor, including:

(1) payment to the debtor by check; or

(2) an adjustment to a credit transaction of the debtor.

(b) If not later than the 28th day after the date the creditor receives the refund the creditor distributes the refund of the unearned premiums by an adjustment to a credit transaction of the debtor that is made effective not later than the 14th day after the date the creditor receives the refund, the creditor shall be in compliance with this section.

Added by Acts 2001, 77th Leg., ch. 726, Sec. 1, eff. Sept. 1, 2001.

Sec. 307.056. CHOICE OF CARRIER. Collateral protection insurance may be placed with an insurer that is authorized to write insurance in this state or an eligible surplus lines insurer selected by the creditor. The insurance shall be evidenced by an individual policy or a certificate of insurance.

Added by Acts 2001, 77th Leg., ch. 726, Sec. 1, eff. Sept. 1, 2001.

Sec. 307.057. CREDITOR LIABILITY. (a) A creditor, its insurer, or the insurer's agent that places collateral protection insurance in substantial compliance with the terms of this chapter is not directly or indirectly liable to a debtor, cosigner, or guarantor or any other person in connection with the placement of the collateral protection insurance.

(b) This chapter does not impose a fiduciary relationship between the creditor and debtor. Placement of collateral protection insurance is for the principal purpose of protecting the interest of the creditor if the debtor fails to insure collateral as required by the credit agreement.

(c) A creditor is not required under this chapter to purchase collateral protection insurance or to otherwise insure collateral. A creditor is not liable to a debtor or any other person for failing to purchase collateral protection insurance, failing to purchase a certain amount or level of coverage of collateral protection insurance, or purchasing collateral protection insurance that protects only the interests of the creditor or less than all the interest of a debtor. This chapter does not create a cause of action for damages on behalf of a debtor or any other person in connection with the placement of collateral protection insurance.

Added by Acts 2001, 77th Leg., ch. 726, Sec. 1, eff. Sept. 1, 2001.

Sec. 307.058. RIGHTS OF CREDITOR AND DEBTOR. (a) The obligations and rights of the creditor and debtor with respect to the collateral under Chapters 1 through 9, Business & Commerce Code, are not affected by this chapter.

(b) This chapter does not impair other remedies, rights, or options available to a creditor under any law, rule, regulation, ruling, court order, or agreement.

(c) This chapter does not impair or alter other requirements of this code or other law that may apply to a credit transaction.

Added by Acts 2001, 77th Leg., ch. 726, Sec. 1, eff. Sept. 1, 2001.

CHAPTER 308. CONSUMER CREDIT PROTECTIONS

Sec. 308.001. APPLICABILITY. This chapter applies to a person regularly engaged in the business of extending credit under this subtitle primarily for personal, family, or household use and not for a business, commercial, investment, or agricultural purpose. This chapter does not apply to a transaction primarily for a business, commercial, investment, or agricultural purpose.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 1.01, eff. September 1, 2005.

Sec. 308.002. FALSE, MISLEADING, OR DECEPTIVE ADVERTISING. (a) A creditor may not, in any manner, advertise or cause to be advertised a false, misleading, or deceptive statement or representation relating to a rate, term, or condition of a credit transaction or advertise credit terms that the person does not intend to offer to consumers who qualify for those terms.

(b) This section does not create a private right of action.

(c) In interpreting this section, an administrative agency or a court shall be guided by the applicable advertising provisions of:

(1) Part C of 15 U.S.C. Chapter 41, Subchapter I (15 U.S.C. Section 1601 et seq.);

(2) 12 C.F.R. Part 226 adopted by the Board of Governors of the Federal Reserve System; and

(3) the Official Staff Commentary and other interpretations of that statute and regulation by the Board of Governors of the Federal Reserve System and its staff.

(d) If a requirement of this section and a requirement of a federal law, including a regulation or an interpretation of federal law, are inconsistent or in conflict, federal law controls and the inconsistent or conflicting requirements of this chapter do not apply.

(e) A creditor who complies with the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and Federal Reserve Regulation Z (12 C.F.R. Part 226) in advertising a credit transaction is considered to have fully complied with this section.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 1.01, eff. September 1, 2005.

Sec. 308.003. NO DOUBLE LIABILITY OR ENFORCEMENT FOR SAME ACT OR PRACTICE. A judgment, consent decree, assurance of compliance, or other resolution of a claimed violation asserted by a federal agency under the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) bars a subsequent action or other enforcement under this chapter with respect to the same act or practice.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 1.01, eff. September 1, 2005.

CHAPTER 339. MISCELLANEOUS PROVISIONS RELATING TO INTEREST

Sec. 339.002. BILLING CYCLE INTEREST LIMITATION ON OPEN-END ACCOUNT WITHOUT MERCHANT DISCOUNT. (a) This section applies to an open-end account agreement that provides for credit card transactions:

(1) in which the creditor relies on one of the ceilings authorized by Chapter 303 for the rate of interest; and

(2) in connection with which the creditor does not impose or receive a merchant discount.

(b) Interest or time price differential may not be charged for a billing cycle of an open-end account credit agreement if:

(1) the total amount of the obligor's payments during the cycle equal or exceed the balance owed under the agreement at the end of the preceding billing cycle; or

(2) an amount is not owed under the agreement at the end of the preceding billing cycle.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 339.003. SALE OF OPEN-END ACCOUNT WITHOUT MERCHANT DISCOUNT. A seller or lessor may sell an open-end account credit agreement described by Section 339.002(a) or any balance under that agreement to a purchaser who purchases a substantial part of the seller's or lessor's open-end account credit agreements or balances under those agreements in accordance with Subchapter G, Chapter 345. A charge, fee, or discount on that sale:

(1) is not a merchant discount;

(2) does not disqualify the open-end account credit

agreement or a balance under that agreement from being subject to Chapter 303 or from coverage under this section; and

(3) does not subject the account to the limitations provided by Section 303.006(c).

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 339.004. APPLICATION OF LICENSING REQUIREMENT AND SUBTITLE B TO CREDIT UNION OR EMPLOYEE BENEFIT PLAN. (a) A credit union is not subject to Subtitle B and is not required to obtain a license under this title.

(b) With respect to a loan that an employee benefit plan that is subject to Title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sections 1001-1114) makes to a participant in the plan or a participant's beneficiary, the plan is not subject to Subtitle B and is not required to obtain a license under this title.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 339.005. APPLICABILITY OF CERTAIN FEDERAL LAW. This title does not override or restrict the applicability of 12 U.S.C. Section 1735f-7a.

Added by Acts 2001, 77th Leg., ch. 916, Sec. 9, eff. Sept. 1, 2001.

SUBTITLE B. LOANS AND FINANCED TRANSACTIONS
CHAPTER 341. GENERAL PROVISIONS
SUBCHAPTER A. DEFINITIONS AND TIME COMPUTATION

Sec. 341.001. DEFINITIONS. In this subtitle:

(1) "Authorized lender" means a person who holds a license issued under Chapter 342, a bank, or a savings association.

(2) "Bank" means a person:

(A) organized as a state bank under Subtitle A, Title 3, or under similar laws of another state if the deposits of a bank from another state are insured by the Federal Deposit Insurance Corporation; or

(B) organized as a national bank under 12 U.S.C. Section 21 et seq., as subsequently amended.

(3) "Cash advance" means the total of the amount of cash or its equivalent that the borrower receives and the amount that is paid at the borrower's direction or request, on the borrower's behalf, or for the borrower's benefit.

(4) "Commissioner" means the consumer credit commissioner.

(5) "Credit union" means a person:

(A) doing business under Subtitle D, Title 3; or

(B) organized under the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.), as subsequently amended.

(6) "Deferred presentment transaction" means a transaction in which:

(A) a cash advance in whole or part is made in exchange for a personal check or authorization to debit a deposit account;

(B) the amount of the check or authorized debit equals the amount of the advance plus a fee; and

(C) the person making the advance agrees that the check will not be cashed or deposited or the authorized debit will not be made until a designated future date.

(7) "Finance commission" means the Finance Commission of Texas or a subcommittee created by rule of the Finance Commission of Texas.

(8) "Interest" has the meaning assigned by Section 301.002.

(9) "Loan" has the meaning assigned by Section 301.002 and includes a sale-leaseback transaction and a deferred presentment transaction.

(10) "Sale-leaseback transaction" means a transaction in which a person sells personal property used primarily for personal, family, or household use and the buyer of the property agrees to lease the property back to the seller. In a sale-leaseback transaction:

(A) the buyer is a creditor and the seller is an obligor;

(B) an agreement to defer payment of a debt and an obligation to pay the debt are established; and

(C) any amount received by the buyer in excess of the price paid for the property by the buyer is interest subject to this subtitle.

(11) "Savings association" means a person:

(A) organized as a state savings and loan association or savings bank under Subtitle B or C, Title 3, or under similar laws of another state if the deposits of the savings association from another state are insured by the Federal Deposit Insurance Corporation; or

(B) organized as a federal savings and loan association or savings bank under the Home Owners' Loan Act (12 U.S.C. Section 1461 et seq.), as subsequently amended.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.033, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1235, Sec. 9, eff. Sept. 1, 2001.

Sec. 341.002. COMPUTATION OF MONTH. (a) For the computation of time in this subtitle, a month is the period from a date in a month to the corresponding date in the succeeding month. If the succeeding month does not have a corresponding date, the period ends on the last day of the succeeding month.

(b) For the computation of a fraction of a month, a day is equal to one-thirtieth of a month.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER B. REGULATING OFFICIAL

Sec. 341.101. CONSUMER CREDIT COMMISSIONER. The consumer credit commissioner has the powers and shall perform all duties relating to the issuance of a license under this subtitle and is responsible for the other administration of this subtitle except as provided by this subchapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 341.102. REGULATION OF BANKS. (a) The banking commissioner shall enforce this subtitle relating to the regulation of a state bank operating under this subtitle.

(b) The official exercising authority over the operations of national banks equivalent to the authority exercised by the banking commissioner over state banks may enforce this subtitle relating to

the regulation of a national bank operating under this subtitle.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 341.103. REGULATION OF SAVINGS INSTITUTIONS, LICENSED MORTGAGE BROKERS AND LOAN OFFICERS, AND REGISTERED MORTGAGE BANKERS AND LICENSED LOAN OFFICERS. (a) The savings and mortgage lending commissioner shall enforce this subtitle relating to the regulation of:

(1) state savings associations operating under this subtitle;

(2) state savings banks operating under this subtitle;

(3) persons licensed under Chapter 156; and

(4) persons registered or licensed under Chapter 157.

(b) The official exercising authority over the operation of federal savings associations equivalent to the authority exercised by the savings and mortgage lending commissioner over state savings associations may enforce this subtitle relating to the regulation of a federal savings association operating under this subtitle.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.034, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 905 (H.B. 2783), Sec. 11, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 905 (H.B. 2783), Sec. 12, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.060, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 9, eff. April 1, 2010.

Acts 2009, 81st Leg., R.S., Ch. 1147 (H.B. 2779), Sec. 10, eff. April 1, 2010.

Sec. 341.104. REGULATION OF CREDIT UNIONS. (a) The credit union commissioner shall enforce this subtitle relating to the regulation of state credit unions operating under this subtitle.

(b) The official exercising authority over federal credit unions equivalent to the authority exercised by the credit union

commissioner may enforce this subtitle relating to the regulation of a federal credit union operating under this subtitle.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER C. REVISED CEILINGS AND BRACKETS

Sec. 341.201. DEFINITIONS OF INDEXES. In this subchapter:

(1) "Consumer price index" means the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1967=100, compiled by the Bureau of Labor Statistics, United States Department of Labor, or, if that index is canceled or superseded, the index chosen by the Bureau of Labor Statistics as most accurately reflecting the changes in the purchasing power of the dollar for consumers.

(2) "Reference base index" means the consumer price index for December 1967.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 341.202. REVISION OF CEILING OR BRACKET. (a) Each year the commissioner shall compute, in accordance with Section 341.203, the amount of each:

(1) ceiling on a cash advance regulated under this subtitle that is required to be revised; and

(2) bracket that establishes a range of cash advances or balances to which a maximum charge provided by this subtitle applies and that is required to be revised.

(b) The revised ceiling or bracket amount takes effect on July 1 of the year of its computation.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 341.203. COMPUTATION OF REVISED CEILING OR BRACKET. (a) The amount of a revised ceiling or bracket is computed by:

(1) dividing the reference base index into the consumer price index at the end of the preceding year;

(2) computing the percentage of change under Subdivision (1) to the nearest whole percent;

(3) rounding the result computed under Subdivision (2) to the next lower multiple of 10 percent unless the result computed under Subdivision (2) is a multiple of 10 percent in which event that result is used; and

(4) multiplying the reference amount of the ceiling or bracket provided by this subtitle by the result under Subdivision (3).

(b) If the consumer price index is revised, the revised index shall be used to compute amounts under this section after that revision takes effect. If the revision changes the reference base index, a revised reference base index shall be used. The revised reference base index shall bear the same ratio to the reference base index as the revised consumer price index for the first month in which it is available bears to the consumer price index for the first month in which the revised consumer price index is available.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 341.204. PUBLICATION OF REVISED CEILING, BRACKET, OR INDEX INFORMATION. (a) The commissioner shall send the amount of a revised ceiling or bracket computed under Section 341.203 to the secretary of state for publication in the Texas Register before May 1 of the year in which the amount of the bracket or ceiling is to change.

(b) If the consumer price index is revised or superseded, the commissioner promptly shall send the revised index, the numerical equivalent of the reference base index under a revised reference base index, or the designation of the index that supersedes the consumer price index, as appropriate, to the secretary of state for publication in the Texas Register.

(c) A court may take judicial notice of information published under this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER D. ADVERTISING REQUIREMENTS

Sec. 341.301. INFORMATION ABOUT ADVERTISERS. (a) In each advertisement that purports to offer credit regulated by this subtitle, Subtitle C, or Chapter 394, the advertiser shall disclose

the legal or registered name of the advertiser and:

(1) shall disclose the street address of the advertiser's place of business unless the advertisement:

(A) is located on the premises of the advertiser's place of business; or

(B) is broadcast by radio or television; or

(2) if the advertisement is broadcast by radio or television, shall:

(A) disclose the telephone number of the advertiser; and

(B) comply with the applicable disclosure requirements of 12 C.F.R. Section 226.1 et seq. (Regulation Z).

(b) This section does not apply to:

(1) a federally insured depository institution; or

(2) a person engaged in interstate commerce who advertises under a generally recognized trade name, abbreviated form of a trade name, or logo.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER E. PROHIBITIONS AND VIOLATIONS

Sec. 341.401. DISCRIMINATION PROHIBITED. (a) An authorized lender or other person involved in a transaction subject to this title may not deny to an individual who has the capacity to contract an extension of credit, including a loan, in the individual's name or restrict or limit the credit extended:

(1) because of sex, race, color, religion, national origin, marital status, or age;

(2) because all or part of the individual's income derives from a public assistance program in the form of social security or supplemental security income; or

(3) because the individual has in good faith exercised a right under the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.; 18 U.S.C. Section 891 et seq.).

(b) In interpreting this section, a court or administrative agency shall be guided by the Equal Credit Opportunity Act (15 U.S.C. Section 1691 et seq.) and regulations under and interpretations of that Act by the Federal Reserve Board to the extent that Act and those regulations and interpretations can be made applicable to

conduct prohibited by this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 341.402. PENALTIES FOR PROHIBITED DISCRIMINATION. (a) A person who violates Section 341.401 is liable to the aggrieved individual for:

(1) the actual damages caused by the violation;

(2) punitive damages not to exceed $10,000 in an action brought by the aggrieved individual; and

(3) court costs.

(b) The liability of a person under this section is instead of and not in addition to that person's liability under Title VII of the Consumer Credit Protection Act (15 U.S.C. Section 1691 et seq.). If the same act or omission violates Section 341.401 and applicable federal law, the person aggrieved by that conduct may bring a legal action to recover monetary damages either under this section or under that federal law, but not both.

(c) In addition to the other liabilities prescribed by this section, a person holding a license issued under this subtitle who violates Section 341.401 is subject to revocation or suspension of the license or the assessment of civil penalties by the commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 1.02, eff. September 1, 2005.

Sec. 341.403. FALSE, MISLEADING, OR DECEPTIVE ADVERTISING. (a) A person may not, in any manner, advertise or cause to be advertised a false, misleading, or deceptive statement or representation relating to a rate, term, or condition of a credit transaction, including a loan, regulated under this subtitle, Subtitle C, or Chapter 394, or advertise credit terms that the person does not intend to offer to consumers who qualify for those terms.

(b) If a rate or charge is stated in advertising, the rate or charge shall be stated fully and clearly.

(c) The finance commission may not adopt rules restricting advertising or competitive bidding by a license holder regulated by

the Office of Consumer Credit Commissioner except to prohibit false, misleading, or deceptive practices.

(d) In its rules to prohibit false, misleading, or deceptive practices, the finance commission may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder; or

(4) restricts the license holder's advertisement under a trade name, unless the trade name is deceptive.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1235, Sec. 10, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 1.03, eff. September 1, 2005.

Sec. 341.404. PROHIBITED ACTS RELATING TO A LOAN. A person may not perform an act, including advertising, or offer a service that would cause another to believe that the person is offering to make, arrange, or negotiate a loan that is subject to this subtitle, Subtitle C, or Chapter 394 unless the person is authorized to perform the act or offer the service as:

(1) a credit service organization under Chapter 393;

(2) a pawnbroker under Chapter 371; or

(3) an authorized lender.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 341.405. PENALTY FOR MAKING ILLEGAL OFFER. (a) A person commits an offense if the person violates Section 341.404. An offense under that section is a Class C misdemeanor.

(b) A person who violates Section 341.404:

(1) may be prosecuted for the offense; or

(2) may be held liable for:

(A) the penalties under Chapter 349; and

(B) civil penalties assessed by the consumer credit commissioner.

(c) A person is not subject to both prosecution and the penalties described by Subsection (b)(2).

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 341.406. WHEN ACT OR OMISSION NOT VIOLATION. An act or omission does not violate this title if the act or omission conforms to:

(1) Subchapter C;

(2) a provision determined by the commissioner; or

(3) an interpretation of this title that is in effect at the time of the act or omission and that was made by:

(A) the commissioner under Section 14.108; or

(B) an appellate court of this state or the United States.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER F. LICENSING AND REGULATION IN GENERAL

Sec. 341.501. STAGGERED RENEWAL. The finance commission by rule may adopt a system under which licenses under this subtitle expire on various dates during the year. For the year in which the license expiration date is changed, the Office of Consumer Credit Commissioner shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 11, eff. Sept. 1, 2001.

Sec. 341.502. FORM OF LOAN CONTRACT AND RELATED DOCUMENTS. (a) A contract for a loan under Chapter 342, a retail installment transaction under Chapter 348, or a home equity loan regulated by the Office of Consumer Credit Commissioner must be:

(1) written in plain language designed to be easily understood by the average consumer; and

(2) printed in an easily readable font and type size.

(a-1) If the terms of the agreement for a loan under Subsection (a) were negotiated in Spanish, a copy of a summary of those terms and other pertinent information shall be provided to the debtor in Spanish in a form identical to disclosures required for a closed-end transaction under 12 C.F.R. Section 226.18.

(b) The finance commission shall adopt rules governing the form of contracts to which this section applies. The rules must include model contracts complying with the rules and this section.

(c) A person governed by this section is not required to use a model contract. The person, however, may not use a contract other than a model contract unless the person has submitted the contract to the commissioner. The commissioner shall issue an order disapproving the contract if the commissioner determines that the contract does not comply with this section or rules adopted under this section.

(d) The person may begin using a contract submitted under Subsection (c) on the date it is submitted for review. If the commissioner issues an order disapproving the contract, the person may not use the contract after the order takes effect.

(e) A person may not represent that the commissioner's failure to disapprove a contract constitutes an approval of the contract by the commissioner, the Office of Consumer Credit Commissioner, or the finance commission.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 11, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1071 (H.B. 1547), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1071 (H.B. 1547), Sec. 2, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 238 (S.B. 1965), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 6, eff. September 1, 2011.

SUBCHAPTER G. STATE-LICENSED RESIDENTIAL MORTGAGE LOAN ORIGINATOR RECOVERY FUND

Sec. 341.601. DEFINITION. In this subchapter, "fund" means the state-licensed residential mortgage loan originator recovery fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 9, eff.

June 19, 2009.

Sec. 341.602. STATE-LICENSED RESIDENTIAL MORTGAGE LOAN ORIGINATOR RECOVERY FUND. (a) The commissioner under Chapter 180 shall establish, administer, and maintain a state-licensed residential mortgage loan originator recovery fund as provided by this subchapter. The amounts received by the commissioner for deposit in the fund shall be held by the commissioner in trust for carrying out the purposes of the fund.

(b) Subject to this subsection, the fund shall be used to reimburse residential mortgage loan applicants for actual damages incurred because of acts committed by a state-licensed residential mortgage loan originator who was licensed under Chapter 342, 347, 348, or 351 when the act was committed. The use of the fund is limited to reimbursement for out-of-pocket losses caused by an act that constitutes a violation of Chapter 180 or this subtitle. Payments from the fund may not be made to a lender who makes a residential mortgage loan originated by the state-licensed residential mortgage loan originator or who acquires a residential mortgage loan originated by the state-licensed residential mortgage loan originator.

(c) The fund may be used at the discretion of the commissioner to reimburse expenses incurred to secure and destroy residential mortgage loan documents that have been abandoned by a current or former state-licensed residential mortgage loan originator under the regulatory authority of the agency.

(d) Payments from the fund shall be reduced by the amount of any recovery from the state-licensed residential mortgage loan originator or from any surety, insurer, or other person or entity making restitution to the applicant on behalf of the originator.

(e) The commissioner, as manager of the fund, is entitled to reimbursement for reasonable and necessary costs and expenses incurred in the management of the fund, including costs and expenses incurred with regard to applications filed under Section 341.605.

(f) Amounts in the fund may be invested and reinvested in the same manner as funds of the Employees Retirement System of Texas, and the interest from those investments shall be deposited to the credit of the fund. An investment may not be made under this subsection if the investment will impair the necessary liquidity required to

satisfy payment of judgments awarded under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 9, eff. June 19, 2009.

Sec. 341.603. FUNDING. (a) An applicant for an original residential mortgage loan originator license issued under Chapter 342, 347, 348, or 351 or for renewal of a residential mortgage loan originator license issued under Chapter 342, 347, 348, or 351 shall, in addition to paying the original application fee or renewal fee, pay a fee in an amount determined by the commissioner. The fee shall be deposited in the fund.

(b) If the balance remaining in the fund at the end of a calendar year is more than $2.5 million, the amount of money in excess of that amount shall be available to the commissioner to offset the expenses of participating in and sharing information with the Nationwide Mortgage Licensing System and Registry in accordance with Chapter 180.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 9, eff. June 19, 2009.

Sec. 341.604. STATUTE OF LIMITATIONS. (a) An application for the recovery of actual damages from the fund under Section 341.605 may not be filed after the second anniversary of the date of the alleged act or omission causing the actual damages or the date the act or omission should reasonably have been discovered.

(b) This section does not apply to a subrogation claim brought by the commissioner for recovery of money paid out of the fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 9, eff. June 19, 2009.

Sec. 341.605. PROCEDURE FOR RECOVERY. (a) To recover from the fund, a residential mortgage loan applicant must file a written sworn application with the commissioner in the form prescribed by the commissioner. A person who knowingly makes a false statement in connection with applying for money out of the fund may be subject to

criminal prosecution under Section 37.10, Penal Code.

(b) The residential mortgage loan applicant is required to show:

(1) that the applicant's claim is based on facts allowing recovery under Section 341.602; and

(2) that the applicant:

(A) is not a spouse of the state-licensed residential mortgage loan originator;

(B) is not a child, parent, grandchild, grandparent, or sibling, including relationships by adoption, of the state-licensed residential mortgage loan originator;

(C) is not a person sharing living quarters with the state-licensed residential mortgage loan originator or a current or former employer, employee, or associate of the originator;

(D) is not a person who has aided, abetted, or participated other than as a victim with the state-licensed residential mortgage loan originator in any activity that is illegal under this subtitle or Chapter 180 or is not the personal representative of a state-licensed residential mortgage loan originator; and

(E) is not licensed as a state-licensed residential mortgage loan originator who is seeking to recover any compensation in the transaction or transactions for which the application for payment is made.

(c) On receipt of the verified application, the commissioner's staff shall:

(1) notify each appropriate license holder and the issuer of any surety bond issued in connection with their licenses; and

(2) investigate the application and issue a preliminary determination, giving the applicant, the license holder, and any surety an opportunity to resolve the matter by agreement or to dispute the preliminary determination.

(d) If the preliminary determination under Subsection (c)(2) is not otherwise resolved by agreement and is not disputed by written notice to the commissioner before the 31st day after the notification date, the preliminary determination automatically becomes final and the commissioner shall make payment from the fund, subject to the limits of Section 341.606.

(e) If the preliminary determination under Subsection (c)(2) is disputed by the applicant, license holder, or any surety by written

notice to the commissioner before the 31st day after the notification date, the matter shall be set for a hearing governed by Chapter 2001, Government Code, and the hearing rules of the finance commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 9, eff. June 19, 2009.

Sec. 341.606. RECOVERY LIMITS. (a) A person entitled to receive payment out of the fund is entitled to receive reimbursement of actual, out-of-pocket damages as provided by this section.

(b) A payment from the fund may be made as provided by Section 341.605 and this section. A payment for claims:

(1) arising out of the same transaction, including interest, is limited in the aggregate to $25,000, regardless of the number of claimants; and

(2) against a single person licensed as a residential mortgage loan originator under Chapter 342, 347, 348, or 351 is limited in the aggregate to $50,000 until the fund has been reimbursed for all amounts paid.

(c) In the event there are concurrent claims under Subsections (b)(1) and (2) that exceed the amounts available under the fund, the commissioner shall prorate recovery based on the amount of damage suffered by each claimant.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 9, eff. June 19, 2009.

Sec. 341.607. REVOCATION OF LICENSE FOR PAYMENT FROM FUND. (a) The commissioner may revoke a residential mortgage loan originator license issued under this subtitle on proof that the commissioner has made a payment from the fund of any amount toward satisfaction of a claim against a state-licensed residential mortgage loan originator under this subchapter.

(b) The commissioner may seek to collect from a state-licensed residential mortgage loan originator the amount paid from the fund on behalf of the originator and any costs associated with investigating and processing the claim against the fund or with collection of reimbursement for payments from the fund, plus interest at the current legal rate until the amount has been repaid in full. Any

amount, including interest, recovered by the commissioner shall be deposited to the credit of the fund.

(c) The commissioner may probate an order revoking a license under this section.

(d) A state-licensed residential mortgage loan originator on whose behalf payment was made from the fund is not eligible to receive a new license until the originator has repaid in full, plus interest at the current legal rate, the amount paid from the fund on the originator's behalf and any costs associated with investigating and processing the claim against the fund or with collection of reimbursement from the fund.

(e) This section does not limit the authority of the commissioner to take disciplinary action against a state-licensed residential mortgage loan originator for a violation of the chapter under which the license was issued or the rules adopted by the finance commission under that chapter. The repayment in full to the fund of all obligations of a state-licensed residential mortgage loan originator does not nullify or modify the effect of any other disciplinary proceeding.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 9, eff. June 19, 2009.

Sec. 341.608. SUBROGATION. When the commissioner has paid an applicant an amount from the fund under Section 341.605, the commissioner is subrogated to all of the rights of the applicant to the extent of the amount paid. The applicant shall assign the applicant's right, title, and interest in any subsequent judgment against the state-licensed residential mortgage loan originator up to the amount paid by the commissioner. Any amount, including interest, recovered by the commissioner on the assignment shall be deposited to the credit of the fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 9, eff. June 19, 2009.

Sec. 341.609. FAILURE TO COMPLY WITH SUBCHAPTER OR RULE ADOPTED BY FINANCE COMMISSION. The failure of an applicant under Section 341.605 to comply with a provision of this subchapter or a rule

adopted by the finance commission relating to the fund constitutes a waiver of any rights under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 9, eff. June 19, 2009.

Sec. 341.610. RULEMAKING. The finance commission may adopt rules on the commissioner's recommendation to promote a fair and orderly administration of the fund consistent with the purposes of this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 9, eff. June 19, 2009.

CHAPTER 342. CONSUMER LOANS

SUBCHAPTER A. GENERAL PROVISIONS; APPLICABILITY OF CHAPTER

Sec. 342.001. DEFINITIONS. In this chapter:

(1) "Irregular transaction" means a loan:

(A) that is payable in installments that are not consecutive, monthly, and substantially equal in amount; or

(B) the first scheduled installment of which is due later than one month and 15 days after the date of the loan.

(2) "Regular transaction" means a loan:

(A) that is payable in installments that are consecutive, monthly, and substantially equal in amount; and

(B) the first scheduled installment of which is due within one month and 15 days after the date of the loan.

(3) "Regulated loan license" means a consumer loan license.

(4) "Secondary mortgage loan" means a loan that is:

(A) secured in whole or in part by an interest, including a lien or security interest, in real property that is:

(i) improved by a dwelling designed for occupancy by four or fewer families; and

(ii) subject to one or more liens, security interests, prior mortgages, or deeds of trust; and

(B) not to be repaid before the 91st day after the date of the loan.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1,

1999; Acts 1999, 76th Leg., ch. 909, Sec. 2.04, eff. Sept. 1, 1999.

Sec. 342.002. INTEREST COMPUTATION METHODS. (a) The scheduled installment earnings method is a method to compute an interest charge by applying a daily rate to the unpaid balance of the principal amount as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled principal reduction.

(b) The true daily earnings method is a method to compute an interest charge by applying a daily rate to the unpaid balance of the principal amount. The earned finance charge is computed by multiplying the daily rate by the number of days the principal balance is outstanding.

(c) For the purposes of Subsections (a) and (b), the daily rate is 1/365th of the equivalent contract rate.

(d) Interest under the scheduled installment earnings method or true daily earnings method may not be compounded.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 909, Sec. 2.05, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 784 (S.B. 1251), Sec. 1, eff. September 1, 2013.

Sec. 342.003. PURCHASE FROM MORTGAGEE. For the purposes of this chapter, a purchase from a mortgagee of an interest in a secondary mortgage loan that was made to secure that loan is treated as if it were a secondary mortgage loan.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.004. CONSTITUTIONAL INTEREST; EXEMPTION FOR LOAN WITH INTEREST RATE OF 10 PERCENT OR LESS. (a) Except as otherwise fixed by law, the maximum rate of interest is 10 percent a year.

(b) A loan providing for a rate of interest that is 10 percent a year or less is not subject to this chapter.

(c) A loan described by Section 302.001(d) may provide for a

delinquency charge as provided by that section without being subject to this chapter or any other provision of this subtitle.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 916, Sec. 10, eff. Sept. 1, 2001.

Sec. 342.005. APPLICABILITY OF CHAPTER. Except as provided by Sections 302.001(d) and 342.004(c), a loan is subject to this chapter if the loan:

(1) provides for interest in excess of 10 percent a year;

(2) is extended primarily for personal, family, or household use to a person who is located in this state at the time the loan is made;

(3) is made by a person engaged in the business of making, arranging, or negotiating those types of loans; and

(4) either:

(A) is not secured by a lien on real property; or

(B) is described by Section 342.001(4), 342.301, or 342.456 and is predominantly payable in monthly installments.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 916, Sec. 11, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1235, Sec. 12, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 14, eff. September 1, 2019.

Sec. 342.006. EXEMPTION FOR CERTAIN SECONDARY MORTGAGE LOANS. This chapter does not apply to a secondary mortgage loan made by a seller of property to secure all or part of the unpaid purchase price.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.007. DEFERRED PRESENTMENT TRANSACTION. The finance

commission shall adopt rules providing for the regulation of deferred presentment transactions.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 13, eff. Sept. 1, 2001.

Sec. 342.008. ATTEMPT TO EVADE LAW. A person who is a party to a deferred presentment transaction may not evade the application of this subtitle or a rule adopted under this subchapter by use of any device, subterfuge, or pretense. Characterization of a required fee as a purchase of a good or service in connection with a deferred presentment transaction is a device, subterfuge, or pretense for the purposes of this section.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 13, eff. Sept. 1, 2001.

Sec. 342.009. RETURN OF PROPERTY IN SALE-LEASEBACK TRANSACTION. The seller in a sale-leaseback agreement may terminate the agreement at any time by returning the property to the buyer in substantially the same condition as when the agreement was entered, less reasonable wear. On return of the property the seller is liable only for rental and other allowed charges under the agreement accruing before the date of the return.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 13, eff. Sept. 1, 2001.

SUBCHAPTER B. AUTHORIZED ACTIVITIES; LICENSE

Sec. 342.051. LICENSE REQUIRED. (a) A person must hold a license issued under this chapter to:

(1) engage in the business of making, transacting, or negotiating loans subject to this chapter; or

(2) contract for, charge, or receive, directly or indirectly, in connection with a loan subject to this chapter, a charge, including interest, compensation, consideration, or another expense, authorized under this chapter that in the aggregate exceeds the charges authorized under other law.

(b) A person may not use any device, subterfuge, or pretense to evade the application of this section.

(c) A person is not required to obtain a license under

Subsection (a) if the person is:

(1) a bank, savings bank, or savings and loan association organized under the laws of the United States or under the laws of the institution's state of domicile; or

(2) subject to Chapter 651, Insurance Code.

(c-1) A person who is licensed or registered under Chapter 156 or 157 is not required to obtain a license under this section to make, negotiate, or transact a residential mortgage loan, as defined by Section 180.002.

(d) An insurance agent licensed under Subchapter B, C, D, or E, Chapter 4051, Insurance Code, is not required to obtain a license to negotiate or arrange a loan on behalf of a bank, savings bank, or savings and loan association provided that the insurance agent or the bank, savings bank, or savings and loan association does not make the provision of insurance a condition to apply for or obtain a loan or service from the bank, savings bank, or savings and loan association.

(e) An electronic return originator who is an authorized Internal Revenue Service e-file provider is not required to obtain a license to make, negotiate, or transact a loan that is based on a person's federal income tax refund on behalf of a bank, savings bank, savings and loan association, or credit union.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(15), eff. September 1, 2011.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 909, Sec. 2.06, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 604, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.116, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 905 (H.B. 2783), Sec. 13, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 64, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 655 (S.B. 1124), Sec. 65(a)(15), eff. September 1, 2011.

Sec. 342.0515. RESIDENTIAL MORTGAGE LOAN ORIGINATOR ACTIVITIES.

(a) In this section, "Nationwide Mortgage Licensing System and Registry" and "residential mortgage loan originator" have the meanings assigned by Section 180.002.

(b) Unless exempt under Section 180.003, or acting under the temporary authority described under Section 180.0511, an individual who acts as a residential mortgage loan originator in the making, transacting, or negotiating of a loan subject to this chapter must:

(1) be individually licensed to engage in that activity under this chapter;

(2) be enrolled with the Nationwide Mortgage Licensing System and Registry as required by Section 180.052; and

(3) comply with other applicable requirements of Chapter 180 and rules adopted under that chapter.

(c) Subject to Section 14.112, the finance commission shall adopt rules establishing procedures for issuing, renewing, and enforcing an individual license under this section. In adopting rules under this subsection, the finance commission shall ensure that:

(1) the minimum eligibility requirements for issuance of an individual license are the same as the requirements of Section 180.055;

(2) the minimum eligibility requirements for renewal of an individual license are the same as the requirements of Section 180.059; and

(3) the applicant pays:

(A) an investigation fee in a reasonable amount determined by the commissioner; and

(B) a license fee in an amount determined as provided by Section 14.107.

(d) The finance commission may adopt rules under this chapter as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 10, eff. June 19, 2009.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 695 (S.B. 2330), Sec. 4, eff. November 24, 2019.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 15, eff. September 1, 2019.

Sec. 342.052. ISSUANCE OF MORE THAN ONE LICENSE FOR A PERSON. (a) The commissioner may issue more than one license to a person on compliance with this chapter for each license.

(b) A person who is required to hold a license under this chapter must hold a separate license for each office at which loans are made, negotiated, serviced, held, or collected under this chapter.

(c) A license is not required under this chapter for a place of business:

(1) devoted to accounting or other recordkeeping; and

(2) at which loans are not made, negotiated, serviced, held, or collected under this chapter or Chapter 346.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 909, Sec. 2.07, eff. Sept. 1, 1999.

Sec. 342.053. AREA OF BUSINESS; LOANS BY MAIL OR ONLINE. (a) A lender is not limited to making loans to residents of the community in which the office for which the license or other authority is granted.

(b) A lender may make, negotiate, arrange, and collect loans by mail or online from a licensed office.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 16, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 17, eff. September 1, 2019.

SUBCHAPTER C. APPLICATION FOR AND ISSUANCE OF LICENSE

Sec. 342.101. APPLICATION REQUIREMENTS. (a) The application for a license under this chapter must:

(1) be under oath;

(2) give the approximate location from which business is to

be conducted;

(3) identify the business's principal parties in interest; and

(4) contain other relevant information that the commissioner requires for the findings required under Section 342.104.

(b) On the filing of one or more license applications, the applicant shall pay to the commissioner an investigation fee of $200.

(c) On the filing of each license application, the applicant shall pay to the commissioner a license fee in an amount determined as provided by Section 14.107.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1235, Sec. 14, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 18, eff. September 1, 2019.

Sec. 342.102. BOND. (a) If the commissioner requires, an applicant for a license under this chapter shall file with the application a bond that is:

(1) in an amount not to exceed the total of:

(A) $50,000 for the first license; and

(B) $10,000 for each additional license;

(2) satisfactory to the commissioner; and

(3) issued by a surety company qualified to do business as a surety in this state.

(b) The bond must be in favor of this state for the use of this state and the use of a person who has a cause of action under this chapter against the license holder.

(c) The bond must be conditioned on:

(1) the license holder's faithful performance under this chapter and rules adopted under this chapter; and

(2) the payment of all amounts that become due to the state or another person under this chapter during the period for which the bond is given.

(d) The aggregate liability of a surety to all persons damaged by the license holder's violation of this chapter may not exceed the amount of the bond.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 909, Sec. 2.08, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 19, eff. September 1, 2019.

Sec. 342.103. INVESTIGATION OF APPLICATION. On the filing of an application and, if required, a bond, and on payment of the required fees, the commissioner shall conduct an investigation to determine whether to issue the license.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.104. APPROVAL OR DENIAL OF APPLICATION. (a) The commissioner shall approve the application and issue to the applicant a license to make loans under this chapter if the commissioner finds that:

(1) the financial responsibility, experience, character, and general fitness of the applicant are sufficient to:

(A) command the confidence of the public; and

(B) warrant the belief that the business will be operated lawfully and fairly, within the purposes of this chapter; and

(2) the applicant has net assets of at least $25,000 available for the operation of the business.

(b) If the commissioner does not find the eligibility requirements of Subsection (a), the commissioner shall notify the applicant.

(c) If an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (b), the applicant is entitled to a hearing not later than the 60th day after the date of the request.

(d) The commissioner shall approve or deny the application not later than the 60th day after the date of the filing of a completed application with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. The commissioner and the applicant may agree to a later

date in writing.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.105. DISPOSITION OF FEES ON DENIAL OF APPLICATION. If the commissioner denies the application, the commissioner shall retain the investigation fee and shall return to the applicant the license fee submitted with the application.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.106. LICENSE TERM. A license issued under this chapter is valid for the period prescribed by finance commission rule adopted under Section 14.112.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 20, eff. September 1, 2019.

SUBCHAPTER D. LICENSE

Sec. 342.151. NAME AND PLACE ON LICENSE. (a) A license must state:

(1) the name of the license holder; and

(2) the address of the office from which the business is to be conducted.

(b) A license holder may not conduct business under this chapter under a name or at a place of business in this state other than the name or office stated on the license.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.152. LICENSE DISPLAY. A license holder shall display a license at the place of business provided on the license.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1,

1999.

Sec. 342.153. MINIMUM ASSETS FOR LICENSE. (a) Except as provided by Subsection (b) or (c), a license holder shall maintain for each office for which a license is held net assets of at least $25,000 that are used or readily available for use in conducting the business of that office.

(b) A license holder who held a license under the Texas Regulatory Loan Act and was issued a license to make loans under that chapter as provided by Section 4, Chapter 274, Acts of the 60th Legislature, Regular Session, 1967, shall maintain for the office for which that license is held net assets of at least $15,000 that are used or readily available for use in conducting the business of that office.

(c) A license holder who paid the pawnbroker's occupational tax for 1967 and was issued a license to make loans under that chapter as provided by Section 4, Chapter 274, Acts of the 60th Legislature, Regular Session, 1967, is exempt from the minimum assets requirement of Subsection (a) for the office for which that license is held.

(d) If a license holder holds a license to which Subsection (b) or (c) applies and subsequently transfers the license to another person, the minimum assets required under Subsection (a) shall apply to the license and the subsequent license holder.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.154. LICENSE FEE. Not later than 30 days before the date the license expires, a license holder shall pay to the commissioner for each license held a fee in an amount determined as provided by Section 14.107.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1235, Sec. 15, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 21, eff. September 1, 2019.

Sec. 342.155. EXPIRATION OF LICENSE ON FAILURE TO PAY FEE. If the fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on that day.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 22, eff. September 1, 2019.

Sec. 342.1555. GROUNDS FOR REFUSING RENEWAL. The commissioner may refuse to renew the license of a person who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 23, eff. September 1, 2019.

Sec. 342.156. LICENSE SUSPENSION OR REVOCATION. After notice and opportunity for a hearing, the commissioner may suspend or revoke a license if the commissioner finds that:

(1) the license holder failed to pay the license fee, an examination fee, an investigation fee, or another charge imposed by the commissioner under this chapter;

(2) the license holder, knowingly or without the exercise of due care, violated this chapter or a rule adopted or order issued under this chapter;

(3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application; or

(4) the license holder has failed to ensure that an individual acting as a residential mortgage loan originator, as defined by Section 180.002, in the making, transacting, or negotiating of a loan subject to this chapter is licensed under this chapter in accordance with Section 342.0515.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 11, eff. June 19, 2009.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 24, eff. September 1, 2019.

Sec. 342.157. CORPORATE CHARTER FORFEITURE. (a) A license holder who violates this chapter is subject to revocation of the holder's license and, if the license holder is a corporation, forfeiture of its charter.

(b) When the attorney general is notified of a violation of this chapter and revocation of a license, the attorney general shall file suit in a district court in Travis County, if the license holder is a corporation, for forfeiture of the license holder's charter.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.158. LICENSE SUSPENSION OR REVOCATION FILED WITH PUBLIC RECORDS. The decision of the commissioner on the suspension or revocation of a license and the evidence considered by the commissioner in making the decision shall be filed in the public records of the commissioner.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.159. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE OF NEW LICENSE AFTER REVOCATION. The commissioner may reinstate a suspended license or issue a new license on application to a person whose license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the commissioner's denial of an original application for the license.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.160. SURRENDER OF LICENSE. A license holder may surrender a license issued under this chapter by delivering to the commissioner:

(1) the license; and

(2) a written notice of the license's surrender.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.161. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR SURRENDER. (a) The suspension, revocation, or surrender of a license issued under this chapter does not affect the obligation of a contract between the license holder and a debtor entered into before the revocation, suspension, or surrender.

(b) Surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.162. MOVING AN OFFICE. (a) A license holder shall give written notice to the commissioner before the 30th day preceding the date the license holder moves an office from the location provided on the license.

(b) The commissioner shall amend a license holder's license accordingly.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.163. TRANSFER OR ASSIGNMENT OF LICENSE. A license may be transferred or assigned only with the approval of the commissioner.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

SUBCHAPTER E. INTEREST CHARGES ON NON-REAL PROPERTY LOANS

Sec. 342.201. MAXIMUM INTEREST CHARGE AND ADMINISTRATIVE FEE. (a) A loan contract under this chapter that is a regular transaction and is not secured by real property may provide for an interest charge on the cash advance that does not exceed the amount of add-on interest equal to the amount computed for the full term of the contract at an add-on interest amount equal to:

(1) $18 for each $100 per year on the part of the cash advance that is less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference base amount of $300; and

(2) $8 for each $100 per year on the part of the cash advance that is more than the amount computed for Subdivision (1) but less than or equal to an amount computed under Subchapter C, Chapter 341, using the reference base amount of $2,500.

(b) For the purpose of Subsection (a):

(1) when the loan is made an interest charge may be computed for the full term of the loan contract;

(2) if the period before the first installment due date includes a part of a month that is longer than 15 days, that portion of a month may be considered a full month; and

(3) if a loan contract provides for precomputed interest, the amount of the loan is the total of:

(A) the cash advance; and

(B) the amount of precomputed interest.

(c) A loan contract under this chapter that is an irregular transaction and is not secured by real property may provide for an interest charge, using any method or formula, that does not exceed the amount that, having due regard for the schedule of installment payments, would produce the same effective return as allowed under this section if the loan were payable in equal successive monthly installments beginning one month from the date of the contract.

(d) A loan contract under this chapter that is not secured by real property may provide for a rate or amount of interest computed using the true daily earnings method or the scheduled installment earnings method that does not exceed the alternative interest rate as computed under Subchapter A, Chapter 303. Interest may accrue on the principal balance and amounts added to principal after the date of the loan contract from time to time unpaid at the rate provided for by the contract until the date of payment in full or demand for

payment in full.

(e) A loan contract under this chapter that is not secured by real property may provide for a rate or amount of interest computed using the true daily earnings method or the scheduled installment earnings method that does not exceed:

(1) 30 percent a year on that part of the cash advance that is less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference base amount of $500;

(2) 24 percent a year on that part of the cash advance that is more than the amount computed for Subdivision (1) but less than or equal to an amount computed under Subchapter C, Chapter 341, using the reference base amount of $1,050; and

(3) 18 percent a year on that part of the cash advance that is more than the amount computed for Subdivision (2) but less than or equal to an amount computed under Subchapter C, Chapter 341, using the reference base amount of $2,500.

(e-1) The interest charge under Subsection (e) must be contracted for, charged, or received using the scheduled installment earnings method or the true daily earnings method under one of the following methods:

(1) applying the applicable daily rate to each part of the unpaid principal balance corresponding to the brackets described by Subsection (e) for the actual or scheduled number of days during a payment period; or

(2) applying a single equivalent daily rate to the unpaid principal balance for the actual or scheduled number of days during a payment period, where the single equivalent daily rate is determined at the inception of the loan using the scheduled installment earnings method and would earn an amount of interest authorized under Subsection (e) if the debt were paid to maturity according to the schedule of payments.

(f) A loan contract under this subchapter may provide for an administrative fee in an amount not to exceed $25 for a loan of more than $1,000 or $20 for a loan of $1,000 or less. The administrative fee is considered earned when the loan is made or refinanced and is not subject to refund. An administrative fee is not interest. A lender refinancing the loan may not contract for or receive an administrative fee for the loan more than once in any 180-day period, except that if the loan has an interest charge authorized by Subsection (e) the lender may not contract for or receive the

administrative fee more than once in any 365-day period. One dollar of each administrative fee may be deposited with the comptroller for use in carrying out the finance commission's responsibilities under Section 11.3055.

(g) The finance commission by rule may prescribe a reasonable maximum amount of an administrative fee for a loan contract under this subchapter that is greater than the maximum amount authorized by this section for the amount of the loan.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 935, Sec. 2.01, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 916, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 211, Sec. 2.03(a), eff. June 16, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 784 (S.B. 1251), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 784 (S.B. 1251), Sec. 3, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1003 (H.B. 3855), Sec. 1, eff. September 1, 2019.

Sec. 342.202. MAXIMUM CHARGE FOR LOAN WITH SINGLE REPAYMENT. A loan contract that exceeds the maximum cash advance under Section 342.251 and that is payable in a single installment may provide for an interest charge on the cash advance that does not exceed a rate or amount that would produce the same effective return, determined as a true daily earnings rate, as allowed under Section 342.201 considering the amount and term of the loan. If a loan under this section is prepaid in full, the lender may earn a minimum interest charge of $25.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 909, Sec. 2.09, eff. Sept. 1, 1999.

Sec. 342.203. ADDITIONAL INTEREST FOR DEFAULT: REGULAR TRANSACTION. (a) A loan contract that includes precomputed interest or uses the scheduled installment earnings method and that is a regular transaction may provide for additional interest for default if any part of an installment remains unpaid after the 10th day after

the date on which the installment is due, including Sundays and holidays.

(b) A loan contract that uses the scheduled installment earnings method and that is a regular transaction may provide for additional interest for default if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(c) A loan contract that includes simple interest and that is a regular transaction may provide for additional interest for default if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(d) The additional interest may not exceed five cents for each $1 of a scheduled installment.

(e) Interest under this section may not be collected more than once on the same installment.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 909, Sec. 2.10, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 934, Sec. 2.01, eff. Sept. 1, 1999.

Sec. 342.204. ADDITIONAL INTEREST FOR INSTALLMENT DEFERMENT: REGULAR TRANSACTION. (a) On a loan contract that includes precomputed interest or uses the scheduled installment earnings method and that is a regular transaction, an authorized lender may charge additional interest for the deferment of an installment if:

(1) the entire amount of the installment is unpaid;

(2) no interest for default has been collected on the installment; and

(3) payment of the installment is deferred for one or more full months and the maturity of the contract is extended for a corresponding period.

(b) The interest for deferment under Subsection (a) may not exceed the amount computed by:

(1) taking the difference between the refund that would be required for prepayment in full as of the date of deferment and the refund that would be required for prepayment in full one month before the date of deferment; and

(2) multiplying the results under Subdivision (1) by the

number of months in the deferment period.

(c) The amount of interest applicable to each deferred balance or installment period occurring after a deferment period remains the amount applicable to that balance or period under the original loan contract.

(d) If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the refund required under Subchapter H, a pro rata refund of that part of the interest for deferment applicable to the number of full months remaining in the deferment period on the payment date.

(e) For the purposes of this section, a deferment period is the period during which a payment is not required or made because of the deferment and begins on the day after the due date of the scheduled installment that precedes the first installment being deferred.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 909, Sec. 2.11, eff. Sept. 1, 1999.

Sec. 342.205. COLLECTION OF DEFAULT OR DEFERMENT INTEREST. Interest for default under Section 342.203 or for installment deferment under Section 342.204 may be collected when it accrues or at any time after it accrues.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.206. ADDITIONAL INTEREST FOR DEFAULT: IRREGULAR TRANSACTION. (a) A loan contract that includes precomputed interest and that is an irregular transaction may provide for additional interest for default using the true daily earnings method for the period from the maturity date of an installment until the date the installment is paid. The rate of the additional interest may not exceed the maximum contract interest rate.

(b) A loan contract that includes simple interest and that is an irregular transaction may provide for additional interest for default if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays. The additional interest may not exceed five cents for each $1 of a scheduled installment. Interest under this subsection

may not be collected more than once on the same installment.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 934, Sec. 2.02, eff. Sept. 1, 1999.

SUBCHAPTER F. ALTERNATE CHARGES FOR CERTAIN LOANS

Sec. 342.251. MAXIMUM CASH ADVANCE. The maximum cash advance of a loan made under this subchapter is an amount computed under Subchapter C, Chapter 341, using the reference base amount of $100, except that for loans that are subject to Section 342.259 the reference base amount is $200.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.22, eff. September 1, 2005.

Sec. 342.252. ALTERNATE CHARGES. (a) Instead of the charges authorized by Section 342.201, a loan contract may provide for:

(1) on a cash advance of less than $30, an acquisition charge that is not more than $1 for each $5 of the cash advance;

(2) on a cash advance equal to or more than $30 but not more than $100:

(A) an acquisition charge that is not more than the amount equal to one-tenth of the amount of the cash advance; and

(B) an installment account handling charge that is not more than:

(i) $3 a month if the cash advance is not more than $35;

(ii) $3.50 a month if the cash advance is more than $35 but not more than $70; or

(iii) $4 a month if the cash advance is more than $70; or

(3) on a cash advance of more than $100:

(A) an acquisition charge that is not more than $10; and

(B) an installment account handling charge that is not more than the ratio of $4 a month for each $100 of cash advance.

(b) For an acquisition charge authorized by this subchapter, the finance commission by rule may prescribe a reasonable maximum amount for an acquisition charge that is greater than the maximum amount authorized by the applicable section of this subchapter for the amount of the cash advance.

(c) An acquisition charge under this subchapter is not interest.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 784 (S.B. 1251), Sec. 4, eff. September 1, 2013.

Sec. 342.253. MAXIMUM INTEREST CHARGE FOR LOAN WITH SINGLE REPAYMENT. A loan contract to which Section 342.251 applies and that is payable in a single installment may provide for an acquisition charge and an interest charge on the cash advance that does not exceed a rate or amount that would produce the same effective return, determined as a true daily earnings rate, as allowed under Section 342.252 considering the amount and term of the loan. If a loan that has a term in excess of one month under this section is prepaid in full, the lender may earn a minimum of the acquisition charge and interest charge for one month. If a loan under this section has an initial term of less than one month, the lender may earn a minimum of the acquisition charge and an interest charge that produces the same effective return as the installment account handling charge computed at a daily rate for the term the loan is outstanding.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 909, Sec. 2.12, eff. Sept. 1, 1999.

Sec. 342.254. NO OTHER CHARGES AUTHORIZED. (a) On a loan made under this subchapter a lender may not contract for, charge, or receive an amount unless this subchapter authorizes the amount to be charged.

(b) An insurance charge is not authorized on a loan made under this subchapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.255. MAXIMUM LOAN TERM. The maximum scheduled term of a loan made under this subchapter is:

(1) for a loan of $100 or less, the lesser of:

(A) one month for each multiple of $10 of cash advance; or

(B) six months; and

(2) for a loan of more than $100, one month for each multiple of $20 of cash advance.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 784 (S.B. 1251), Sec. 5, eff. September 1, 2013.

Sec. 342.256. REFUND. (a) An acquisition charge authorized under Section 342.252(1), (2), or (3) is considered to be earned at the time a loan is made and is not subject to refund.

(b) On the prepayment of a loan with a cash advance of $30 or more, the installment account handling charge authorized under Section 342.252(2) or (3) is subject to refund in accordance with Subchapter H.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 189, Sec. 1, eff. Sept. 1, 2001.

Sec. 342.257. DEFAULT CHARGE; DEFERMENT OF PAYMENT. The provisions of Subchapter E relating to additional interest for default and additional interest for the deferment of installments apply to a loan made under this subchapter. Provided, that on a loan contract in which the cash advance is $100 or more, instead of additional interest for default under Subchapter E, the contract may provide for a delinquency charge if any part of an installment remains unpaid after the 10th day after the date on which the

installment is due, including Sundays and holidays. The delinquency charge on a loan with a cash advance of $100 or more may not exceed the greater of $10 or five cents for each $1 of the delinquent installment.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.23, eff. September 1, 2005.

Sec. 342.258. SCHEDULES FOR WEEKLY, BIWEEKLY, OR SEMIMONTHLY INSTALLMENTS. The commissioner may prepare schedules that may be used by an authorized lender for the repayment of a loan made under this subchapter by weekly, biweekly, or semimonthly installments.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.259. LOANS WITH LARGER ADVANCES. (a) Instead of the charges authorized by Sections 342.201 and 342.252, a loan made under this subchapter with a maximum cash advance computed under Subchapter C, Chapter 341, using a reference base amount that is more than $100 but not more than $200, may provide for:

(1) an acquisition charge that is not more than $10; and

(2) an installment account handling charge that is not more than the ratio of $4 a month for each $100 of cash advance.

(b) An acquisition charge under this section is considered to be earned at the time a loan is made and is not subject to refund. On the prepayment of a loan that is subject to this section, the installment account handling charge is subject to refund in accordance with Subchapter H.

(c) Except as provided by this section, provisions of this chapter applicable to a loan that is subject to Section 342.252 also apply to a loan that is subject to this section.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.24, eff. September 1, 2005.

Sec. 342.260. ALTERNATE INTEREST CHARGE COMPUTATION METHODS. (a) A loan contract under this subchapter may provide for an interest charge computed using the true daily earnings method or the scheduled installment earnings method that does not exceed the equivalent rate or effective return of the installment account handling charge for the original scheduled term of the loan.

(b) The principal balance of a loan contract authorized by this section may not include the acquisition charge, installment account handling charge, default charges, or deferment charges or the return check fees authorized by Section 3.506, Business & Commerce Code.

(c) Interest may accrue on the principal balance from time to time unpaid at the rate provided for by the contract until the date of payment in full or demand for payment in full.

(d) A payment on a loan contract authorized by this section shall be applied to the borrower's account in the following order or, at the lender's option, under another method of applying a payment that is more favorable to the borrower:

(1) the straight line allocation of the acquisition charge using the original scheduled term of the loan based on the proportional scheduled payment that was paid or scheduled to be paid;

(2) default charges authorized by Section 342.257;

(3) return check fees authorized by Section 3.506, Business & Commerce Code;

(4) any other charges authorized by this subchapter;

(5) accrued interest authorized by this section; and

(6) principal.

Added by Acts 2013, 83rd Leg., R.S., Ch. 784 (S.B. 1251), Sec. 7, eff. September 1, 2013.

SUBCHAPTER G. INTEREST AND OTHER CHARGES ON SECONDARY MORTGAGE LOANS

Sec. 342.301. MAXIMUM INTEREST CHARGE. (a) A secondary mortgage loan that is a regular transaction may provide for an interest charge on the cash advance that is precomputed and that does not exceed a rate or amount that would produce the same effective return as allowed under Subchapter A, Chapter 303.

(b) For the purpose of Subsection (a):

(1) when the loan is made an interest charge may be computed for the full term of the loan contract;

(2) if the period before the first installment due date includes a part of a month that is longer than 15 days, that portion of a month may be considered a full month; and

(3) if a loan contract provides for precomputed interest, the amount of the loan is the total of:

(A) the cash advance; and

(B) the amount of precomputed interest.

(c) A secondary mortgage loan may provide for a rate or amount of interest calculated using the true daily earnings method or the scheduled installment earnings method that does not exceed the alternative rate ceiling in Subchapter A, Chapter 303. Interest may accrue on the principal balance and amounts added to principal after the date of the loan contract from time to time unpaid at the rate provided for by the contract until the date of payment in full or demand for payment in full. An interest charge under this subsection may not be precomputed.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.302. ADDITIONAL INTEREST FOR DEFAULT: REGULAR TRANSACTION OR TRANSACTION INCLUDING SIMPLE INTEREST. (a) A secondary mortgage loan that includes precomputed interest and that is a regular transaction may provide for additional interest for default if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(b) A secondary mortgage loan contract that uses the scheduled installment earnings method and that is a regular transaction may provide for additional interest for default if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(c) The additional interest for default under this section may not exceed five cents for each $1 of a scheduled installment.

(d) Interest under this section may not be collected more than once on the same installment.

(e) A secondary mortgage loan that includes simple interest may provide for additional interest for default if any part of an installment remains unpaid after the 10th day after the date on which

the installment is due, including Sundays and holidays.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 27, Sec. 1, 2, eff. May 12, 2003.

Sec. 342.303. ADDITIONAL INTEREST FOR INSTALLMENT DEFERMENT: REGULAR TRANSACTIONS. (a) On a secondary mortgage loan that includes precomputed interest or uses the scheduled installment earnings method and that is a regular transaction, an authorized lender may charge additional interest for the deferment of an installment if:

(1) the entire amount of the installment is unpaid;

(2) no interest for default has been collected on the installment; and

(3) payment of the installment is deferred for one or more full months and the maturity of the contract is extended for a corresponding period.

(b) The interest for deferment under Subsection (a) may not exceed the amount computed by:

(1) taking the difference between the refund that would be required for prepayment in full as of the date of deferment and the refund that would be required for prepayment in full one month before the date of deferment; and

(2) multiplying the results under Subdivision (1) by the number of months in the deferment period.

(c) The amount of interest applicable to each deferred balance or installment period occurring after a deferment period remains the amount applicable to that balance or period under the original loan contract.

(d) If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the refund required under Subchapter H, a pro rata refund of that part of the interest for deferment applicable to the number of full months remaining in the deferment period on the payment date.

(e) For the purposes of this section, a deferment period is the period during which a payment is not required or made because of the deferment and begins on the day after the due date of the scheduled installment that precedes the first installment being deferred.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1,

1999; Acts 1999, 76th Leg., ch. 909, Sec. 2.13, eff. Sept. 1, 1999.

Sec. 342.304. COLLECTION OF DEFAULT OR DEFERMENT INTEREST. Interest for default under Section 342.302 or for installment deferment under Section 342.303 may be collected when it accrues or at any time after it accrues.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.305. ADDITIONAL INTEREST FOR DEFAULT: IRREGULAR TRANSACTION. A secondary mortgage loan that includes precomputed interest and that is an irregular transaction may provide for additional interest for default using the true daily earnings method for the period from the maturity date of an installment until the date the installment is paid. The rate of the additional interest may not exceed the maximum contract interest rate.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.306. DATE OF FIRST SCHEDULED INSTALLMENT. On a secondary mortgage loan made under this chapter the due date of the first installment may not be scheduled later than three months after the date of the loan.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.307. AMOUNTS AUTHORIZED TO BE INCLUDED IN CONTRACT. A secondary mortgage loan contract may provide for:

(1) reasonable fees or charges paid to the trustee in connection with a deed of trust or similar instrument executed in connection with the secondary mortgage loan, including fees for enforcing the lien against or posting for sale, selling, or releasing the property secured by the deed of trust;

(2) reasonable fees paid to an attorney who is not an

employee of the creditor in the collection of a delinquent secondary mortgage loan; or

(3) court costs and fees incurred in the collection of the loan or foreclosure of a lien created by the loan.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 909, Sec. 2.14, eff. Sept. 1, 1999.

Sec. 342.308. AMOUNTS AUTHORIZED TO BE COLLECTED OR ADDED TO LOAN. (a) A lender or a person who is assigned a secondary mortgage loan may collect on or before the closing of the loan, or include in the principal of the loan:

(1) reasonable fees for:

(A) title examination and preparation of an abstract of title by:

(i) an attorney who is not an employee of the lender; or

(ii) a title company or property search company authorized to do business in this state; or

(B) premiums or fees for title insurance or title search for the benefit of the mortgagee and, at the mortgagor's option, for title insurance or title search for the benefit of the mortgagor;

(2) reasonable fees charged to the lender by an attorney who is not a salaried employee of the lender for preparation of the loan documents in connection with the mortgage loan if the fees are evidenced by a statement for services rendered;

(3) charges prescribed by law that are paid to public officials for determining the existence of a security interest or for perfecting, releasing, or satisfying a security interest;

(4) reasonable fees for an appraisal of real property offered as security for the loan prepared by an appraiser who is not a salaried employee of the lender;

(5) the reasonable cost of a credit report;

(6) reasonable fees for a survey of real property offered as security for the loan prepared by a registered surveyor who is not a salaried employee of the lender;

(7) the premiums received in connection with the sale of credit life insurance, credit accident and health insurance, or other

insurance that protects the mortgagee against default by the mortgagor, the benefits of which are applied in whole or in part to reduce or extinguish the loan balance; or

(8) reasonable fees relating to real property offered as security for the loan that are incurred to comply with a federally mandated program if the collection of the fees or the participation in the program is required by a federal agency; and

(9) an administrative fee, subject to Subsection (c), in an amount not to exceed $25 for a loan of more than $1,000 or $20 for a loan of $1,000 or less.

(b) Premiums for property insurance that conform with Section 342.401 may be added to the loan contract.

(c) An administrative fee under Subsection (a)(9) is considered earned when the loan is made or refinanced and is not subject to refund. A lender refinancing the loan may not contract for or receive an administrative fee for the loan more than once in any 180-day period. Fifty cents of each administrative fee may be deposited with the comptroller for use in carrying out the finance commission's responsibilities under Section 11.3055.

(d) Costs that conform to Section 342.4021(a) may be added to the loan contract.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 909, Sec. 2.15, eff. Sept. 1, 1999, Acts 1999, 76th Leg., ch. 935, Sec. 2.02, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 211, Sec. 2.03(b), eff. June 16, 2003; Acts 2003, 78th Leg., ch. 1265, Sec. 1, eff. June 20, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.21, eff. September 1, 2005.

SUBCHAPTER H. REFUND OF PRECOMPUTED INTEREST

Sec. 342.351. REFUND OF PRECOMPUTED INTEREST: SUM OF THE PERIODIC BALANCES. (a) This section applies to a loan contract that includes precomputed interest authorized under Subchapter F or G and that is a regular transaction.

(b) If the contract is prepaid in full, including payment in cash or by a new loan or renewal of the loan, or if the lender demands payment in full of the unpaid balance, after the first

installment due date but before the final installment due date, the lender shall refund or credit to the borrower the amount computed by:

(1) dividing the sum of the periodic balances scheduled to follow the installment date after the date of the prepayment or demand, as appropriate, by the sum of all the periodic balances under the schedule of payments set out in the loan contract; and

(2) multiplying the total interest contracted for under Section 342.252 or 342.301, as appropriate, by the result under Subdivision (1).

(c) If the prepayment in full or demand for payment in full occurs before the first installment due date, the lender shall:

(1) retain an amount computed by:

(A) dividing 30 into the amount that could be retained if the first installment period were one month and the loan were prepaid in full on the date the first installment is due; and

(B) multiplying the result under Paragraph (A) by the number of days in the period beginning on the date the loan was made and ending on the date of the prepayment or demand; and

(2) refund or credit to the borrower the amount computed by subtracting the amount retained under Subdivision (1) from the interest contracted for under Section 342.252 or 342.301, as appropriate.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 916, Sec. 2, eff. Sept. 1, 2001.

Sec. 342.352. REFUND OF PRECOMPUTED INTEREST ON CONTRACT: SCHEDULED INSTALLMENT EARNINGS. (a) This section applies to a loan contract:

(1) that includes precomputed interest and to which Section 342.351 does not apply;

(2) that includes interest contracted for under Section 342.201 or 342.260; or

(3) that has a term of more than 60 months.

(b) If the contract is prepaid in full, including payment in cash or by a new loan or renewal of the loan, or if the lender demands payment in full of the unpaid balance before final maturity of the contract, the lender earns interest for the period beginning

on the date of the loan and ending on the date of the prepayment or demand, as applicable, an amount that does not exceed the amount allowed by Subsection (f) using the simple annual interest rate under the contract.

(c) If prepayment in full or demand for payment in full occurs during an installment period, the lender may retain, in addition to interest that accrued during any elapsed installment periods, an amount computed by:

(1) multiplying the simple annual interest rate under the contract by the unpaid principal balance of the loan determined according to the schedule of payments to be outstanding on the preceding installment due date;

(2) dividing 365 into the product under Subdivision (1); and

(3) multiplying the number of days in the period beginning on the day after the installment due date and ending on the date of the prepayment or demand, as appropriate, by the result obtained under Subdivision (2).

(d) The lender may also earn interest on an addition to principal, or other permissible charges, added to the loan after the date of the loan contract, accruing at the simple annual interest rate under the contract from the date of the addition until the date paid or the date the lender demands payment in full of the total unpaid balance under the loan contract.

(e) The lender shall refund or credit to the borrower the amount computed by subtracting the total amount retained under Subsections (b), (c), and (d) from the total amount of interest contracted for and precomputed in the amount of the loan.

(f) For the purposes of this section, the simple annual interest rate under a contract is equal to the rate computed under the scheduled installment earnings method.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 916, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 916, Sec. 4, eff. Sept. 1, 2001. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 784 (S.B. 1251), Sec. 6, eff. September 1, 2013.

Sec. 342.353. NO REFUND ON PARTIAL PREPAYMENT OR OF AMOUNT LESS THAN $1. A refund is not required under this subchapter for a partial prepayment or if the amount to be refunded is less than $1.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

SUBCHAPTER I. INSURANCE

Sec. 342.401. REQUIRED PROPERTY INSURANCE. (a) On a loan that is subject to Subchapter E with a cash advance of $300 or more, a lender may require a borrower to insure tangible personal property offered as security for the loan.

(b) On a secondary mortgage loan, a lender may require a borrower to provide property insurance as security against reasonable risks of loss, damage, and destruction.

(c) The insurance coverage and the premiums or charges for the coverage must bear a reasonable relationship to:

(1) the amount, term, and conditions of the loan;

(2) the value of the collateral; and

(3) the existing hazards or risk of loss, damage, or destruction.

(d) The insurance may not:

(1) cover unusual or exceptional risks; or

(2) provide coverage not ordinarily included in policies issued to the general public.

(e) A creditor may not require the purchase of duplicate property insurance if the creditor has knowledge that the borrower:

(1) has valid and collectible insurance covering the property; and

(2) has provided a loss payable endorsement sufficient to protect the creditor.

(f) For purposes of determining the knowledge required under Subsection (e), a creditor may rely on a written consent to purchase insurance in which the borrower is given the opportunity to disclose the existence of other coverage.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 909, Sec. 2.16, eff. Sept. 1, 1999.

Sec. 342.402. CREDIT LIFE INSURANCE, CREDIT HEALTH AND ACCIDENT INSURANCE, OR INVOLUNTARY UNEMPLOYMENT INSURANCE. (a) On a loan made under this chapter that is subject to Subchapter E with a cash advance of $100 or more, a lender may:

(1) offer a borrower credit life insurance and credit health and accident insurance as additional protection for the loan; and

(2) offer involuntary unemployment insurance to the borrower at the time the loan is made.

(b) A lender may not require that the borrower accept or provide the insurance described by Subsection (a).

(c) On a secondary mortgage loan made under this chapter, a lender may require that a borrower provide credit life insurance and credit accident and health insurance as additional protection for the loan.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 909, Sec. 2.17, eff. Sept. 1, 1999.

Sec. 342.4021. AGREEMENTS REGARDING DEBT SUSPENSION, DEBT CANCELLATION, AND GAP WAIVER. (a) In connection with a loan made under this chapter that is subject to Section 342.201(d) or 342.301(c), a lender may offer to the borrower a debt suspension agreement or debt cancellation agreement under similar terms and conditions as such an agreement may be offered by a bank or savings association.

(b) In connection with a loan made under this chapter that is subject to Section 342.201(d) and that is secured by a motor vehicle, a lender may offer to the borrower at the time the loan is made a gap waiver agreement.

(c) A lender may not require that a borrower accept or provide an agreement or contract under Subsection (a) or (b).

(d) In addition to other disclosures required by state or federal law and before offering an agreement or contract authorized by this section, the lender shall provide to the borrower a notice separate from the loan documents stating that the borrower is not required to accept or provide the agreement or contract to obtain the loan.

(e) The amount charged for a product authorized by Subsection

(a) or (b) must be reasonable.

Added by Acts 2003, 78th Leg., ch. 1265, Sec. 2, eff. June 20, 2003.

Sec. 342.403. MAXIMUM AMOUNT OF INSURANCE COVERAGE. (a) At any time the total amount of the policies of credit life insurance in force on one borrower on one loan contract may not exceed the greater of:

(1) the total amount repayable under the loan contract if the loan is an irregular transaction; or

(2) the greater of the scheduled or actual amount of unpaid indebtedness if the loan is a regular transaction.

(b) At any time the total amount of the policies of credit accident and health insurance or involuntary unemployment insurance in force on one borrower on one loan contract may not exceed the total amount repayable under the loan contract, and the amount of each periodic indemnity payment may not exceed the scheduled periodic installment payment on the loan.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.404. INSURANCE NOTICE. (a) If insurance is required on a loan made under this chapter, the lender shall give to the borrower written notice that clearly and conspicuously states that:

(1) insurance is required in connection with the loan; and

(2) the borrower as an option may furnish the required insurance coverage through an insurance policy that is in existence and that is owned or controlled by the borrower or an insurance policy obtained from an insurance company authorized to do business in this state.

(b) If insurance requested or required on a loan made under this chapter is sold or obtained by a lender at a premium or rate of charge that is not fixed or approved by the commissioner of insurance, the lender shall notify the borrower of that fact. If notice is required under Subsection (a), the lender shall include that fact in the notice required by Subsection (a).

(c) A notice required under this section may be:

(1) a separate writing delivered with the loan contract;

or

(2) a part of the loan contract.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.405. INSURANCE MAY BE FURNISHED BY BORROWER. (a) If insurance is required on a loan made under this chapter, the borrower may furnish the insurance coverage through an insurance policy that is in existence and that is owned or controlled by the borrower or an insurance policy obtained by the borrower from an insurance company authorized to do business in this state.

(b) If insurance is required on a loan made under this chapter and the insurance is sold or obtained by the lender at a premium or rate of charge that is not fixed or approved by the commissioner of insurance, the borrower has the option of furnishing the required insurance under this section at any time before the sixth day after the date of the loan.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.406. BORROWER'S FAILURE TO PROVIDE REQUIRED INSURANCE. (a) If a borrower fails to obtain or maintain insurance coverage required under a loan contract or requests the lender to obtain that coverage, the lender may obtain substitute insurance coverage that is substantially equivalent to or more limited than the coverage originally required.

(b) If a loan is subject to Subchapter E, the lender may obtain insurance to cover only the interest of the lender as a secured party if the borrower does not request that the borrower's interest be covered.

(c) Insurance obtained under this section must comply with Sections 342.407 and 342.408.

(d) The lender may add the amount advanced by the lender for insurance coverage obtained under this section to the unpaid balance of the loan contract and may charge interest on that amount from the time it is added to the unpaid balance until it is paid. The rate of additional interest may not exceed the rate that the loan contract

would produce over its full term if each scheduled payment were paid on the due date.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.407. REQUIREMENTS FOR INCLUDING INSURANCE CHARGE IN CONTRACT. Insurance for which a charge is included in a loan contract must be written:

(1) at lawful rates;

(2) in accordance with the Insurance Code; and

(3) by a company authorized to do business in this state.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.408. FURNISHING OF INSURANCE DOCUMENT TO BORROWER. If a lender obtains insurance for which a charge is included in the loan contract, the lender, not later than the 30th day after the date on which the loan contract is executed, shall deliver, mail, or cause to be mailed to the borrower at the borrower's address specified in the contract one or more policies or certificates of insurance that clearly set forth:

(1) the amount of the premium;

(2) the kind of insurance provided;

(3) the coverage of the insurance; and

(4) all terms, including options, limitations, restrictions, and conditions, of each insurance policy.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.409. LENDER'S DUTY IF INSURANCE IS ADJUSTED OR TERMINATED. (a) If insurance for which a charge is included in or added to the loan contract is canceled, adjusted, or terminated, the lender shall:

(1) credit to the amount unpaid on the loan the amount of the refund received by the lender for unearned insurance premiums,

less the amount of the refund that is applied to the purchase by the lender of similar insurance; and

(2) if the amount to be credited under Subdivision (1) is more than the unpaid balance, refund promptly to the borrower the difference between those amounts.

(b) A cash refund is not required under this section if the amount of the refund is less than $1.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.410. PAYMENT FOR INSURANCE FROM LOAN PROCEEDS. A lender, including an officer, agent, or employee of the lender, who accepts insurance under this subchapter as protection for a loan:

(1) may deduct the premium or identifiable charge for the insurance from the proceeds of the loan; and

(2) shall pay the deducted amounts to the insurance company writing the insurance.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.411. INSURANCE OR OTHER GAIN NOT INTEREST. Any gain or advantage to the lender or the lender's employee, officer, director, agent, general agent, affiliate, or associate from insurance or from another agreement or contract permitted under this subchapter or the provision or sale of insurance or another agreement or contract permitted under this subchapter is not additional interest or an additional charge in connection with a loan made under this chapter except as specifically provided by this chapter.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1265, Sec. 3, eff. June 20, 2003.

Sec. 342.412. ACTION UNDER SUBCHAPTER NOT SALE OF INSURANCE. Arranging for insurance or collecting an identifiable charge as authorized by this subchapter is not a sale of insurance.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.413. REQUIRED AGENT OR BROKER PROHIBITED. A lender may not by any direct or indirect method require the purchase of insurance from an agent or broker designated by the lender.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.414. DECLINATION OF EQUAL INSURANCE COVERAGE PROHIBITED. A lender may not decline at any time existing insurance coverage providing substantially equal benefits that comply with this subchapter.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.415. EFFECT OF UNAUTHORIZED INSURANCE CHARGE. (a) If a lender charges for insurance an amount that is not authorized under this subchapter, the lender:

(1) is not entitled to collect an amount for insurance or interest on an amount for insurance; and

(2) shall refund to the borrower or credit to the borrower's account all amounts collected for insurance and interest collected on those amounts.

(b) An overcharge that results from an accidental or bona fide error may be corrected as provided by Subchapter C, Chapter 349.

(c) The remedy provided by this section is not exclusive of any other remedy or penalty provided by this subtitle.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.416. NONFILING INSURANCE. (a) Instead of charging fees for the filing, recording, and releasing of a document securing a loan to which Subchapter E applies, an authorized lender may

include in the loan contract a charge for a nonfiling insurance premium.

(b) The amount of a charge under Subsection (a) may not exceed the amount of fees authorized for filing and recording an original financing statement in the standard form prescribed by the secretary of state.

(c) A lender may receive an amount authorized under this section only if the lender purchases nonfiling insurance in connection with the loan contract.

(d) A lender is not required to furnish to a borrower a policy or certificate of insurance evidencing nonfiling insurance.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

SUBCHAPTER J. AUTHORIZED LENDER'S DUTIES AND AUTHORITY

Sec. 342.451. DELIVERY OF INFORMATION TO BORROWER. (a) When a loan is made under this chapter, the lender shall deliver to the borrower, or to one borrower if there is more than one, a copy of each document signed by the borrower, including the note or loan contract, and a written statement in English that contains:

(1) the names and addresses of the borrower and the lender; and

(2) any type of insurance for which a charge is included in the loan contract and the charge to the borrower for the insurance.

(b) If the note or loan contract shows the information required by Subsection (a), the written statement is not required.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.452. RECEIPT FOR CASH PAYMENT. A lender shall give a receipt to a person making a cash payment on a loan.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.453. ACCEPTANCE OF PREPAYMENT. At any time during

regular business hours, the lender shall accept prepayment of a loan in full or, if the amount tendered is less than the amount required to prepay the loan in full, prepayment of an amount equal to one or more full installments.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.454. RETURN OF INSTRUMENTS TO BORROWER ON REPAYMENT. Within a reasonable time after a loan is repaid in full or an open-end account is terminated according to the terms of the contract, a lender shall cancel and return to a borrower any instrument, including a note, assignment, security agreement, or mortgage that:

(1) secured the loan; and

(2) does not secure another indebtedness of the borrower to the lender.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19, eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 909, Sec. 2.18, eff. Sept. 1, 1999.

Sec. 342.455. AGREEMENT FOR MORE THAN ONE LOAN OR CASH ADVANCE. (a) A lender and a borrower may enter an agreement under which one or more loans or cash advances are from time to time made to or for the account of the borrower.

(b) An agreement under this section may provide for a maximum loan charge on the unpaid principal amounts from time to time outstanding at a rate that does not exceed the rate that produces the maximum interest charge computed under Section 342.201 for an equivalent loan amount.

(c) An agreement under this section must be written and signed by the lender and borrower.

(d) An agreement under this section must contain:

(1) the date of the agreement;

(2) the name and address of each borrower; and

(3) the name and address of the lender.

(e) If a charge for insurance coverage is to be included in a loan contract, an agreement under this section must clearly set forth a simple statement of the amount of the charge or the method by which

the charge is to be computed.

(f) The lender shall deliver a copy of an agreement under this section to the borrower.

(g) The commissioner may prescribe monthly rates of charge that produce the maximum interest charge computed under Section 342.201 for use under Subsection (b).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.456. AGREEMENT TO MODIFY TERM OF SECONDARY MORTGAGE LOAN CONTRACT. (a) A lender and a borrower may enter into an agreement under which a term of a secondary mortgage loan contract is amended, restated, or rescheduled.

(b) An agreement under this section must be written and signed by the lender and borrower.

(c) An agreement under this section must contain:

(1) the date of the agreement;

(2) the name and address of the lender; and

(3) the name and address of each borrower.

(d) The lender shall deliver a copy of an agreement under this section to the borrower.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.457. AUTOMOBILE CLUB MEMBERSHIP OFFERED IN CONNECTION WITH A LOAN. (a) An authorized lender may, at the time or after a loan under Subchapter E is made, offer to sell to the borrower and finance in the loan contract a charge for an automobile club membership.

(b) The lender may not require the purchase of the membership authorized under Subsection (a) as a condition for approval of the loan.

(c) The borrower shall provide the lender with written acknowledgment of the borrower's intent to purchase the membership.

(d) The lender shall give the borrower written notice at the time the loan is made that the borrower:

(1) is not required to purchase the membership as a

condition for approval of the loan; and

(2) is entitled to cancel the transaction and receive a full refund of the purchase price of the membership before the 31st day after the date the loan is made.

(e) The commissioner shall:

(1) adopt a rule providing for disclosure in Spanish of the information required by Subsection (d); and

(2) establish a form for the disclosure of the information required by Subsection (d) that conforms to the plain language and readability requirements applicable to loan contracts under Section 341.502.

(f) The amount charged for a membership as authorized by Subsection (a) must be reasonable.

Added by Acts 2005, 79th Leg., Ch. 252 (H.B. 1088), Sec. 2, eff. September 1, 2005.

SUBCHAPTER K. LIMITATIONS ON AUTHORIZED LENDER

Sec. 342.501. OBLIGATION UNDER MORE THAN ONE CONTRACT. (a) An authorized lender may not induce or permit a person or a husband and wife to be directly or indirectly obligated under more than one loan contract at any time for the purpose or with the effect of obtaining an amount of interest greater than the amount of interest otherwise authorized under this chapter for a loan of that aggregate amount with a maximum interest charge computed under Section 342.201(a), Section 342.201(e), Section 342.252, or any combination of those sections.

(b) Subsection (a) does not prohibit the purchase of a bona fide retail installment contract or revolving charge agreement of a borrower for the purchase of goods or services.

(c) A lender who purchases all or substantially all of the loan contracts of another authorized lender and who at the time of purchase has a loan contract with a borrower whose loan contract is purchased may collect principal and authorized charges according to the terms of each loan contract.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 916, Sec. 5, eff. Sept. 1, 2001.

Sec. 342.502. AMOUNT AUTHORIZED. (a) A lender may not directly or indirectly charge, contract for, or receive an amount that is not authorized under this chapter in connection with a loan to which this chapter applies, including any fee, compensation, bonus, commission, brokerage, discount, expense, and any other charge of any nature, whether or not listed by this subsection.

(b) On a loan subject to Subchapter E or a secondary mortgage loan subject to Subchapter G a lender may assess and collect from the borrower an amount incurred by the lender for:

(1) court costs;

(2) attorney's fees assessed by a court, in addition to those provided by Section 342.307;

(3) a fee authorized by law for filing, recording, or releasing in a public office a security for a loan;

(4) a reasonable amount spent for repossessing, storing, preparing for sale, or selling any security;

(5) a fee for recording a lien on or transferring a certificate of title to a motor vehicle offered as security for a loan made under this chapter; or

(6) a premium or an identifiable charge received in connection with the sale of insurance authorized under this chapter.

(c) Deleted by Acts 1999, 76th Leg., ch. 935, Sec. 2.04, eff. Sept. 1, 1999.

(d) On a loan subject to this chapter a lender may assess and collect a fee that does not exceed the amount prescribed by Section 3.506, Business & Commerce Code, for the return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft offered in full or partial payment of a loan.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 909, Sec. 2.19, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 935, Sec. 2.03, 2.04, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1182 (H.B. 3453), Sec. 5, eff. September 1, 2011.

Sec. 342.503. SECURITY FOR LOAN. (a) A lender may not take as security for a loan made under this chapter an assignment of wages.

(b) A lender may not take as security for a loan made under

Subchapter E or F a lien on real property other than a lien created by law on the recording of an abstract of judgment.

(c) A lender may take as security for a loan made under Subchapter E or F an assignment of:

(1) a warrant drawn against a state fund; or

(2) a claim against a state fund or a state agency.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.504. CONFESSION OF JUDGMENT; POWER OF ATTORNEY. A lender may not take a confession of judgment or a power of attorney authorizing the lender or a third person to confess judgment or to appear for a borrower in a judicial proceeding.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.505. DISCLOSURE OF AMOUNT FINANCED AND SCHEDULE OF PAYMENTS. A lender may not take a promise to pay or loan obligation that does not disclose the amount financed and the schedule of payments, except for an open-end account.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.506. INSTRUMENT WITH BLANK PROHIBITED. A lender may not take an instrument in which a blank is left to be filled in after the loan is made.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.507. WAIVER OF BORROWER'S RIGHT PROHIBITED. A lender may not take an instrument in which a borrower waives any right accruing to the borrower under this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.508. MAXIMUM LOAN TERM. A lender may not enter a loan contract under Section 342.201(a) or Section 342.201(e) under which the borrower agrees to make a scheduled payment of principal more than:

(1) 37 calendar months after the date on which the contract is made, if the contract is for a cash advance of $1,500 or less;

(2) 49 calendar months after the date on which the contract is made, if the contract is for a cash advance of more than $1,500 but not more than $3,000; or

(3) 60 months after the date on which the contract is made, if the contract is for a cash advance of more than $3,000.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 916, Sec. 6, eff. Sept. 1, 2001.

SUBCHAPTER L. ADMINISTRATION OF CHAPTER

Sec. 342.551. ADOPTION OF RULES. (a) The Finance Commission of Texas may adopt rules to enforce this chapter.

(b) The commissioner shall recommend proposed rules to the Finance Commission of Texas.

(c) A rule shall be entered in a permanent book. The book is a public record and shall be kept in the office of the commissioner.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.552. EXAMINATION OF LENDERS; ACCESS TO RECORDS. (a) The commissioner or the commissioner's representative shall, at the times the commissioner considers necessary:

(1) examine each place of business of each authorized lender; and

(2) investigate the lender's transactions, including loans, and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business

regulated under this chapter.

(b) The lender shall:

(1) give the commissioner or the commissioner's representative free access to the lender's office, place of business, files, safes, and vaults; and

(2) allow the commissioner or the commissioner's authorized representative to make a copy of an item that may be investigated under Subsection (a)(2).

(c) During an examination the commissioner or the commissioner's representative may administer oaths and examine any person under oath on any subject pertinent to a matter that the commissioner is authorized or required to consider, investigate, or secure information about under this chapter.

(d) Information obtained under this section is confidential.

(e) A lender's violation of Subsection (b) is a ground for the suspension or revocation of the lender's license.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.553. GENERAL INVESTIGATION. (a) To discover a violation of this chapter or to obtain information required under this chapter, the commissioner or the commissioner's representative may investigate the records, including books, accounts, papers, and correspondence, of a person, including an authorized lender, who the commissioner has reasonable cause to believe is violating this chapter regardless of whether the person claims to not be subject to this chapter.

(b) For the purposes of this section, a person who advertises, solicits, or otherwise represents that the person is willing to make a loan with a cash advance less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference base amount of $2,500 is presumed to be engaged in the business described by Section 342.051.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.554. CERTIFICATE; CERTIFIED DOCUMENT. On application

by any person and on payment of any associated cost, the commissioner shall furnish under the commissioner's seal and signed by the commissioner or an assistant of the commissioner:

(1) a certificate of good standing; or

(2) a certified copy of a license, rule, or order.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.555. TRANSCRIPT OF HEARING: PUBLIC. The transcript of a hearing held by the commissioner under this chapter is a public record.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.556. APPOINTMENT OF AGENT. (a) An authorized lender shall maintain on file with the commissioner a written appointment of a resident of this state as the lender's agent for service of all judicial or other process or legal notice, unless the lender has appointed an agent under another statute of this state.

(b) If an authorized lender does not comply with this section, service of all judicial or other process or legal notice may be made on the commissioner.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.557. PAYMENT OF EXAMINATION COSTS AND ADMINISTRATION EXPENSES. An authorized lender shall pay to the commissioner an amount assessed by the commissioner to cover the direct and indirect cost of an examination of the lender under Section 342.552 and a proportionate share of general administrative expense.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.558. AUTHORIZED LENDER'S RECORDS. (a) An authorized lender shall maintain a record of each loan made under this chapter as is necessary to enable the commissioner to determine whether the lender is complying with this chapter.

(b) An authorized lender shall keep the record, make it available in this state, or, if the lender makes, transacts, or negotiates loans principally by mail, keep the record or make it available at the lender's principal place of business, until the later of:

(1) the fourth anniversary of the date of the loan; or

(2) the second anniversary of the date on which the final entry is made in the record.

(c) A record described by Subsection (a) must be prepared in accordance with accepted accounting practices.

(d) The commissioner shall accept a lender's system of records if the system discloses the information reasonably required under Subsection (a).

(e) An authorized lender shall keep each obligation signed by a borrower at an office in this state designated by the lender unless the obligation is transferred under an agreement that gives the commissioner access to the obligation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.559. ANNUAL REPORT. (a) Each year, not later than May 1 or a later date set by the commissioner, an authorized lender shall file with the commissioner a report that contains relevant information required by the commissioner concerning the lender's business and operations during the preceding calendar year for each office of the lender in this state where business is conducted under this chapter.

(b) A report under this section must be:

(1) under oath; and

(2) in the form prescribed by the commissioner.

(c) A report under this section is confidential.

(d) Annually the commissioner shall prepare and publish a consolidated analysis and recapitulation of reports filed under this section.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

Sec. 342.560. CONDUCTING ASSOCIATED BUSINESS. An authorized lender may conduct business under this chapter in an office, office suite, room, or place of business in which any other business is conducted or in combination with any other business unless the commissioner:

(1) finds after a hearing that the lender's conducting of the other business in that office, office suite, room, or place of business has concealed an evasion of this chapter; and

(2) orders the lender in writing to desist from that conduct in that office, office suite, room, or place of business.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.19(a), eff. Sept. 1, 1999.

SUBCHAPTER M. DEFERRED PRESENTMENT TRANSACTIONS

Sec. 342.601. DEFINITIONS. In this subchapter:

(1) "Lender" means a lender licensed under this chapter.

(2) "Member of the United States military" means:

(A) a member of the armed forces of the United States; or

(B) a member of the Texas National Guard who is called to federal active duty.

Added by Acts 2005, 79th Leg., Ch. 394 (S.B. 1479), Sec. 1, eff. September 1, 2005.

Sec. 342.602. DISCLOSURES TO MILITARY BORROWERS. Before engaging in a deferred presentment transaction, a lender shall provide to a customer who is a member of the United States military or the member's spouse a written statement that clearly and conspicuously states that:

(1) the lender is prohibited by law from:

(A) garnishing the wages of any borrower, including a borrower who is a member of the United States military;

(B) conducting any collection activity against a

borrower who is:

(i) a member of the armed forces of the United States who is deployed to combat or a combat support posting, for the duration of the posting;

(ii) a member of the Texas National Guard who is called to federal active duty, for the duration of the duty;

(iii) the spouse of a person described by Paragraph (i), for the duration of the posting; or

(iv) the spouse of a person described by Paragraph (ii), for the duration of the duty; or

(C) from contacting the employer of a member of the United States military about a deferred presentment debt of the member or the member's spouse;

(2) the lender shall honor the terms of a repayment agreement entered into with a member of the United States military or the member's spouse, including a repayment agreement negotiated through military counselors or third-party credit counselors; and

(3) the lender shall honor any statement made by a commanding officer of a member of the United States military declaring any location where deferred presentment transaction business is to be conducted by the lender to be a place at which a member of the United States military or the member's spouse is prohibited from transacting business.

Added by Acts 2005, 79th Leg., Ch. 394 (S.B. 1479), Sec. 1, eff. September 1, 2005.

Sec. 342.603. PROHIBITED PRACTICES. A lender may not contact the employer of a member of the United States military about a deferred presentment debt of the member or the member's spouse.

Added by Acts 2005, 79th Leg., Ch. 394 (S.B. 1479), Sec. 1, eff. September 1, 2005.

Sec. 342.604. MILITARY BORROWER. (a) A lender may not engage in collection activity against a borrower who is:

(1) a member of the armed forces of the United States who is deployed to combat or a combat support posting, for the duration of the posting;

(2) a member of the Texas National Guard who is called to federal active duty, for the duration of the duty;

(3) the spouse of a person described by Subdivision (1), for the duration of the posting; or

(4) the spouse of a person described by Subdivision (2), for the duration of the duty.

(b) A lender may not garnish the wages of a borrower who is a member of the United States military or the member's spouse.

(c) A lender who engages in a deferred presentment transaction with a member of the United States military or a dependent of a member of the United States military must comply with 10 U.S.C. Section 987 and any regulations adopted under that law, to the extent applicable.

Added by Acts 2005, 79th Leg., Ch. 394 (S.B. 1479), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 835 (H.B. 2008), Sec. 1, eff. September 1, 2017.

Sec. 342.605. REPAYMENT AGREEMENT. With respect to a deferred presentment transaction, a lender shall honor a repayment agreement entered into with a borrower who is a member of the United States military or the member's spouse, including a repayment agreement negotiated through a military counselor or a third-party credit counselor.

Added by Acts 2005, 79th Leg., Ch. 394 (S.B. 1479), Sec. 1, eff. September 1, 2005.

CHAPTER 343. HOME LOANS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 343.001. DEFINITIONS. In this chapter:

(1) "Bridge loan" means temporary or short-term financing requiring payment of only interest until the entire unpaid balance is due.

(2) "Home loan" means a loan that is:

(A) made to one or more individuals for personal, family, or household purposes; and

(B) secured in whole or part by:

(i) a manufactured home, as defined by Section 347.002, used or to be used as the borrower's principal residence; or

(ii) real property improved by a dwelling designed for occupancy by four or fewer families and used or to be used as the borrower's principal residence.

(3) "Restructure" means a change in the payment schedule or other terms of a home loan as a result of the borrower's default.

Added by Acts 2001, 77th Leg., ch. 622, Sec. 1, eff. Sept. 1, 2001.

Sec. 343.002. APPLICABILITY. (a) This chapter applies to a loan under this chapter that is extended to a person who is located in this state at the time the loan is made.

(b) This chapter does not apply to:

(1) a reverse mortgage; or

(2) an open-end account, as defined by Section 301.002.

Added by Acts 2001, 77th Leg., ch. 622, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 25, eff. September 1, 2019.

Sec. 343.003. CONFLICT WITH OTHER PROVISIONS OF TITLE. If this chapter conflicts with another provision of this title, this chapter controls.

Added by Acts 2001, 77th Leg., ch. 622, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER B. PROVISIONS RELATING TO HOME LOANS IN GENERAL

Sec. 343.101. REFINANCING. (a) For purposes of this section, a low-rate home loan is a home loan that at its inception carries an interest rate two percentage points or more below the yield on treasury securities having comparable periods of maturity to the loan maturity, except that if the loan's interest rate is a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped-up rate, as appropriate,

shall be used instead of the rate at the loan's inception to determine whether the loan is a low-rate loan.

(b) A lender may not replace or consolidate a low-rate home loan directly made by a government or nonprofit lender before the seventh anniversary of the date of the loan unless the new or consolidated loan has a lower interest rate and requires payment of a lesser amount of points and fees than the original loan or is a restructure to avoid foreclosure.

Added by Acts 2001, 77th Leg., ch. 622, Sec. 1, eff. Sept. 1, 2001.

Notwithstanding the approval by the voters on Sept. 13, 2003, of the constitutional amendment authorizing the continuation of this section, this section expired as provided by Subsection (b) on Sept. 1, 2003.

Sec. 343.102. DISCLOSURE IN CONNECTION WITH CERTAIN HOME LOANS. (a) For a home loan with an interest rate of 12 percent or greater a year, when the lender makes the disclosure required under the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. Section 2601 et seq.), as amended, for the good faith estimate, or if that Act does not apply, three business days after the date the application is made, the lender shall also provide to the borrower:

(1) a statement regarding the value of mortgage counseling before taking out a home loan;

(2) a list of the nearest available housing counseling agencies approved by the United States Department of Housing and Urban Development;

(3) a list of other resources where mortgage information can be found, including toll-free telephone numbers and online resources; and

(4) other disclosures required by the finance commission, including an official notice regarding high-cost home loans.

(b) This section expires September 1, 2003.

Added by Acts 2001, 77th Leg., Ch. 622 (S.B. 1581), Sec. 1, eff. Sept. 1, 2001. <HardReturn/>Amended by Acts 2003, 78th Leg., Ch. 1207 (S.B. 1067), Sec. 4, eff. Sept. 13, 2003.

Sec. 343.103. DISCLOSURE OF MORTGAGE INFORMATION TO SURVIVING SPOUSE. (a) In this section:

(1) "Estate" has the meaning assigned by Section 22.012, Estates Code.

(2) "Heir" has the meaning assigned by Section 22.015, Estates Code.

(3) "Mortgage servicer" and "mortgagor" have the meanings assigned by Section 51.0001, Property Code.

(b) Not later than the 30th day after a mortgage servicer of a home loan receives a request for the information from the surviving spouse of a mortgagor of the home loan, accompanied by the proof required under Subsection (c), the mortgage servicer shall provide the surviving spouse with information that the mortgagor would have received in a standard monthly statement, including:

(1) the current balance information, including the due dates and the amount of any installments;

(2) whether the loan is current and any amounts that are delinquent;

(3) any loan number; and

(4) the amount of any escrow deposit for taxes and insurance purposes.

(c) A surviving spouse must prove the person's status by providing:

(1) a death certificate of the mortgagor;

(2) an affidavit of disinterested witnesses that is in the form referenced in Section 203.002, Estates Code, including language stating that the surviving spouse was married to the mortgagor at the time of the mortgagor's death; and

(3) an affidavit signed by the surviving spouse stating that the surviving spouse is currently residing in the underlying mortgaged property as the primary residence.

(d) The request from the surviving spouse must also include a notice to the mortgage servicer that states in bold-faced, capital, or underlined letters: "THIS REQUEST IS MADE PURSUANT TO TEXAS FINANCE CODE SECTION 343.103. SUBSEQUENT DISCLOSURE OF INFORMATION IS NOT IN CONFLICT WITH THE GRAMM-LEACH-BLILEY ACT UNDER 15 U.S.C. SECTION 6802(e)(8)."

(e) A mortgage servicer that provides the information as required under this section is not liable to the estate of the mortgagor or any heir or beneficiary of the mortgagor as a result of

providing this information to the surviving spouse.

Added by Acts 2015, 84th Leg., R.S., Ch. 511 (H.B. 831), Sec. 1, eff. September 1, 2015.

Sec. 343.104. RESTRICTIONS ON SINGLE PREMIUM CREDIT INSURANCE. A lender may not offer any individual or group credit life, disability, or unemployment insurance on a prepaid single premium basis in conjunction with a home loan unless the following notice is provided to each applicant for the loan by hand delivery or mail to the applicant not later than the third business day after the date the applicant's application for a home loan is received:

INSURANCE NOTICE TO APPLICANT

You may elect to purchase credit life, disability, or involuntary unemployment insurance in conjunction with this mortgage loan. If you elect to purchase this insurance coverage, you may pay for it either on a monthly premium basis or with a single premium payment at the time the lender closes this loan. If you choose the single premium payment, the cost of the premium will be financed at the interest rate provided for in the mortgage loan.

This insurance is NOT required as a condition of closing the mortgage loan and will be included with the loan only at your request.

You have the right to cancel this credit insurance once purchased. If you cancel it within 30 days of the date of your loan, you will receive either a full refund or a credit against your loan account. If you cancel this insurance at any other time, you will receive either a refund or credit against your loan account of any unearned premium. YOU MUST CANCEL WITHIN 30 DAYS OF THE DATE OF THE LOAN TO RECEIVE A FULL REFUND OR CREDIT.

To assist you in making an informed choice, the following estimates of premiums are being provided along with an example of the cost of financing. The examples assume that the term of the insurance product is ____ years and that the interest rate is _____ percent (a rate that has recently been available for the type of loan you are seeking). PLEASE NOTE THAT THE ACTUAL LOAN TERMS YOU

QUALIFY FOR MAY VARY FROM THIS EXAMPLE. "Total amount paid" is the amount that would be paid if you financed only the total insurance premium for a ___ year period and is equal to the amount you would have paid if you made all scheduled payments. This is NOT the total of payments on your loan.
CREDIT LIFE INSURANCE: Estimated premium of $_____
DISABILITY INSURANCE: Estimated premium of $_____
INVOLUNTARY UNEMPLOYMENT INSURANCE: Estimated premium of $_____
TOTAL INSURANCE PREMIUMS: $_____
TOTAL AMOUNT PAID: $_____

Added by Acts 2001, 77th Leg., ch. 622, Sec. 1, eff. Sept. 1, 2001.

Sec. 343.105. NOTICE OF PENALTIES FOR MAKING FALSE OR MISLEADING WRITTEN STATEMENT. (a) A lender, mortgage banker, or licensed mortgage broker shall provide to each applicant for a home loan a written notice at closing.

(b) The notice must:

(1) be provided on a separate document;

(2) be in at least 14-point type; and

(3) have the following or substantially similar language:

"Warning: Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of Section 32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed $10,000.

"I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan.

"I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our identity, employment, annual income, and intent to occupy the residential real property secured by the home loan, are true and correct as of the date of loan closing."

(c) On receipt of the notice, the loan applicant shall verify

the information and execute the notice.

(d) The failure of a lender, mortgage banker, or licensed mortgage broker to provide a notice complying with this section to each applicant for a home loan does not affect the validity or enforceability of the home loan by any holder of the loan.

Added by Acts 2007, 80th Leg., R.S., Ch. 285 (H.B. 716), Sec. 1, eff. September 1, 2007.

Sec. 343.106. PAYOFF STATEMENTS. (a) In this section, "mortgagee," "mortgage servicer," and "mortgagor" have the meanings assigned by Section 51.0001, Property Code.

(b) The finance commission shall adopt rules governing requests by title insurance companies for payoff information from mortgage servicers related to home loans and the provision of that information, including rules prescribing a standard payoff statement form that must be used by mortgage servicers to provide those payoff statements.

(c) In adopting rules under Subsection (b), the finance commission shall require a mortgage servicer who receives a request for a payoff statement with respect to a home loan from a title insurance company to deliver the requested payoff statement on the prescribed form within a time specified by finance commission rule, which must allow the mortgage servicer at least seven business days after the date the request is received to deliver the payoff statement.

(d) The standard payoff statement form prescribed by the finance commission under Subsection (b) must require that a completed form:

(1) state the proposed closing date for the sale and conveyance of the real property securing the home loan or for any other transaction that would involve the payoff of the home loan, as specified by the title insurance company's request; and

(2) provide a payoff amount that is valid through that date.

(e) Except as provided by Subsection (f) or (g), if the mortgage servicer provides a completed payoff statement form that meets the requirements of this section and rules adopted under this section in response to a request for a payoff statement, the mortgage

servicer or mortgagee may not, on or before the proposed closing date, demand that a mortgagor pay an amount in excess of the payoff amount specified in the payoff statement.

(f) If a mortgage servicer or mortgagee discovers that a payoff statement is incorrect, the mortgage servicer or mortgagee may correct and deliver the statement on or before the second business day before the specified proposed closing date. The corrected payoff statement must be delivered to the requestor by:

(1) certified mail with return receipt requested; and

(2) electronic means, if the requestor provides the mortgage servicer with a means to deliver the corrected statement electronically.

(g) If a mortgage servicer submits an incorrect payoff statement to a title insurance company that results in the mortgage servicer requesting an amount that is less than the correct payoff amount, the mortgage servicer or mortgagee does not deliver a corrected payoff statement in accordance with Subsection (f), and the mortgage servicer receives payment in the amount specified in the payoff statement, the difference between the amount included in the payoff statement and the correct payoff amount:

(1) remains a liability of the former mortgagor owed to the mortgagee; and

(2) if the payoff statement is in connection with:

(A) the sale of the real property:

(i) the deed of trust or other contract lien securing an interest in the property is released;

(ii) within a reasonable time after receipt of payment by the mortgagee or mortgage servicer, the mortgagee or mortgage servicer, as applicable, shall deliver to the title company a release of the deed of trust or other contract lien securing an interest in the property; and

(iii) any proceeds disbursed at closing to or for the benefit of the mortgagor, excluding closing costs related to the transaction, are subject to a constructive trust for the benefit of the mortgagee to the extent of the underpayment; or

(B) a refinance by the mortgagor of the existing home loan:

(i) the lien securing the existing home loan becomes subordinate to the lien securing the new home loan; and

(ii) any proceeds disbursed at closing to or for

the benefit of the mortgagor, excluding closing costs related to the transaction, are subject to a constructive trust for the benefit of the mortgagee to the extent of the underpayment.

Added by Acts 2011, 82nd Leg., R.S., Ch. 57 (H.B. 558), Sec. 1, eff. September 1, 2011.

SUBCHAPTER C. HIGH-COST HOME LOANS

Sec. 343.201. DEFINITIONS. In this subchapter:

(1) "High-cost home loan" means a loan that:

(A) is made to one or more individuals for personal, family, or household purposes;

(B) is secured in whole or part by:

(i) a manufactured home, as defined by Section 347.002, used or to be used as the borrower's principal residence; or

(ii) real property improved by a dwelling designed for occupancy by four or fewer families and used or to be used as the borrower's principal residence;

(C) has a principal amount equal to or less than one-half of the maximum conventional loan amount for first mortgages as established and adjusted by the Federal National Mortgage Association;

(D) is not:

(i) a reverse mortgage; or

(ii) an open-end account, as defined by Section 301.002; and

(E) is a credit transaction described by 12 C.F.R. Section 226.32, as amended, except that the term includes a residential mortgage transaction, as defined by 12 C.F.R. Section 226.2, as amended, if the total loan amount is $20,000 or more and:

(i) the annual percentage rate exceeds the rate indicated in 12 C.F.R. Section 226.32(a)(1)(i), as amended; or

(ii) the total points and fees payable by the consumer at or before loan closing will exceed the amount indicated in 12 C.F.R. Section 226.32(a)(1)(ii), as amended.

(2) "Points and fees" has the meaning assigned by 12 C.F.R. Section 226.32(b), as amended.

Added by Acts 2001, 77th Leg., ch. 622, Sec. 1, eff. Sept. 1, 2001.

Sec. 343.202. BALLOON PAYMENT. A high-cost home loan may not contain a provision for a scheduled payment that is more than twice as large as the average of earlier scheduled monthly payments, unless the balloon payment becomes due not less than 60 months after the date of the loan. This prohibition does not apply if the payment schedule is adjusted to account for the seasonal or otherwise irregular income of the borrower or if the loan is a bridge loan in connection with the acquisition or construction of a dwelling intended to become the borrower's principal dwelling.

Added by Acts 2001, 77th Leg., ch. 622, Sec. 1, eff. Sept. 1, 2001.

Sec. 343.203. NEGATIVE AMORTIZATION. A high-cost home loan may not provide for a payment schedule with regular periodic payments that cause the principal balance to increase, except that this section does not prohibit negative amortization as a consequence of a temporary forbearance, bridge loan, or restructure sought by the borrower.

Added by Acts 2001, 77th Leg., ch. 622, Sec. 1, eff. Sept. 1, 2001.

Sec. 343.204. CONSIDERATION OF OBLIGOR'S PAYMENT ABILITY. (a) In this section, "obligor" means a person obligated to pay a loan, including a borrower, cosigner, or guarantor. If more than one person is obligated to pay a loan, the term refers to those persons collectively.

(b) A lender may not engage in a pattern or practice of extending credit to consumers under high-cost home loans based on the consumers' collateral without regard to the obligor's repayment ability, including the obligor's current and expected income, current obligations, employment status, and other financial resources, other than the obligor's equity in the dwelling that secures repayment of the loan.

Added by Acts 2001, 77th Leg., ch. 622, Sec. 1, eff. Sept. 1, 2001.

Sec. 343.205. PREPAYMENT PENALTIES PROHIBITED. A lender may not make a high-cost home loan containing a provision for a prepayment penalty.

Added by Acts 2001, 77th Leg., ch. 622, Sec. 1, eff. Sept. 1, 2001.

Sec. 343.206. CHARGE PROHIBITED FOR PRODUCT OR SERVICE NOT RECEIVED. A lender, in connection with a high-cost home loan, may not charge a borrower an amount for a service or product if the borrower does not receive the service or product.

Added by Acts 2003, 78th Leg., ch. 1207, Sec. 3, eff. Sept. 13, 2003.

CHAPTER 345. RETAIL INSTALLMENT SALES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 345.001. DEFINITIONS. In this chapter:

(1) "Credit card issuer" means a person who issues an identification device, including a card or plate, that is used to obtain goods or services under a retail credit card arrangement, other than a person who is:

(A) a bank, savings association, or credit union;

(B) licensed to do business under Chapter 342; or

(C) regularly and principally engaged in the business of lending money for personal, family, or household purposes.

(2) "Holder" means:

(A) for a retail installment contract:

(i) the retail seller of the goods or services under the contract if the contract or the outstanding balance under the contract has not been sold or otherwise transferred; or

(ii) if the contract or the outstanding balance under the contract has been sold or otherwise transferred, the person to whom it was transferred;

(B) for a retail charge agreement:

(i) the retail seller of the goods or services under the retail charge agreement if the agreement or the outstanding balance under the agreement has not been sold or otherwise transferred; or

(ii) if the agreement or the outstanding balance under the agreement has been sold or otherwise transferred, the

person to whom it was sold or otherwise transferred; or

(C) for a retail credit card arrangement, the credit card issuer under the arrangement.

(3) "Retail buyer" means a person who:

(A) purchases or agrees to purchase goods from a retail seller; or

(B) obtains services from a retail seller or agrees to have services furnished by a retail seller.

(4) "Retail charge agreement" means one or more instruments that prescribe the terms of retail installment transactions that may be made under the agreement from time to time and under which a time price differential is computed on the unpaid balance from time to time. The term includes an instrument that prescribes the terms of a retail credit card arrangement.

(5) "Retail credit card arrangement" means an arrangement that is not regulated under another chapter of this code and under which:

(A) a retail seller or credit card issuer authorizes a retail buyer or lessee to use a credit card to purchase or lease goods or services from:

(i) the seller or issuer, as appropriate;

(ii) a person related to the seller or issuer;

(iii) a person licensed or franchised to do business under the seller's or issuer's business or trade name or designation; or

(iv) another person authorized to honor the card; and

(B) the debt for the purchase or lease is payable in one or more installments.

(6) "Retail installment contract" means one or more instruments entered into in this state that evidence a secured or unsecured retail installment transaction. The term includes a chattel mortgage, security agreement, and conditional sale contract and a document that evidences a bailment or lease described by Section 345.068, but does not include:

(A) an instrument that is a retail charge agreement;

(B) an instrument reflecting a sale under a retail charge agreement; or

(C) a rental-purchase agreement that complies with Chapter 92, Business & Commerce Code.

(7) "Retail installment transaction" means a transaction in which a retail buyer purchases goods or services from a retail seller under a retail installment contract or retail charge agreement that provides for a time price differential and under which the buyer agrees to pay the unpaid balance and the time price differential in one or more installments. The term includes a transaction:

(A) made under a retail credit card arrangement; or

(B) for the sale of prepaid funeral benefits regulated under Chapter 154.

(8) "Retail seller" means a person who regularly and substantially engages in the business of selling goods or services to retail buyers, other than the services of a member of a learned profession not specifically included under Section 345.003(b).

(9) "Time price differential" means the amount paid or payable for accepting payment in installments for goods or services purchased, regardless of how the amount is denominated or expressed. The term includes an amount payable to a holder as consideration for accepting payment in installments for goods and services charged under a retail credit card arrangement. The term does not include an amount charged for insurance premiums, delinquency charges, attorney's fees, court costs, or official fees.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.035, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.17, eff. April 1, 2009.

Sec. 345.002. GOODS. (a) For the purposes of this chapter, goods are tangible personal property, other than property described by Subsection (d), that is:

(1) purchased primarily for personal, family, or household use; and

(2) not purchased for commercial or business use.

(b) "Goods" includes property described by Subsection (a) that is:

(1) personal property furnished for or used in the modernization, rehabilitation, repair, alteration, improvement, or construction of real property that is to become or becomes a part of

the real property regardless of whether the personal property is severable from the real property;

(2) a structure, other than a mobile home, that is to be used as a residence;

(3) a boat;

(4) a boat-trailer;

(5) a motor scooter, moped, motorcycle, trailer designed or intended to be drawn by or to transport a motor scooter, moped, motorcycle or all-terrain vehicle;

(6) a recreational vehicle designed for temporary living accommodations and commonly known as a travel trailer;

(7) a camper-type trailer;

(8) a horse trailer; and

(9) a vehicle propelled or drawn exclusively by muscular power.

(c) "Goods" also includes a merchandise certificate or coupon that is:

(1) issued by a retail seller;

(2) not redeemable in cash; and

(3) to be used in its face amount instead of cash in exchange for other goods or services sold by the seller.

(d) This chapter does not apply to the sale of:

(1) money;

(2) a vehicle designed to run only on rails or tracks or in the air; or

(3) a motor vehicle, other than a vehicle included under Subsection (b), to which Chapter 348 applies or other goods that are included in a contract under Chapter 348.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.003. SERVICES. (a) For the purposes of this chapter, services include work, labor, and other services, other than services described by Subsection (c), that are:

(1) purchased primarily for personal, family, or household use; and

(2) not purchased for commercial or business use.

(b) "Services" includes work or labor described by Subsection (a) and that is:

(1) a medical or dental service;

(2) a prepaid funeral benefit regulated under Chapter 154; and

(3) a maintenance or service contract or warranty.

(c) This chapter does not apply to the sale of:

(1) legal services;

(2) services of a professional person licensed by this state, unless the services are:

(A) provided in connection with the purchase of goods; or

(B) described by Subsection (b)(1) or (2);

(3) services for which the cost is:

(A) set by law; or

(B) filed with or subject to approval by the United States, this state, or an agency, instrumentality, or subdivision of this state;

(4) educational services provided by:

(A) an accredited college or university; or

(B) a primary or secondary school providing education required by this state;

(5) services provided by a kindergarten or nursery school; or

(6) services that are included in a contract under Chapter 348.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.004. CASH PRICE. (a) The cash price in a retail installment transaction is the price at which the retail seller would have sold to the retail buyer, and the buyer would have bought from the seller, the goods or services that are subject to the transaction if the sale had been a sale for cash.

(b) The cash price may include:

(1) the amount of taxes;

(2) the amount of charges for delivery, installation, servicing, repair, alteration, or improvement; and

(3) an amount described by Section 345.005(1), (3), (4), or (6) that is not separately itemized in the retail installment contract or retail charge agreement.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.005. ITEMIZED CHARGE. An amount charged to a retail buyer in a retail installment contract or retail charge agreement is an itemized charge if the amount is not included in the cash price and is the amount of:

(1) fees prescribed by law for filing, recording, or otherwise perfecting, releasing, or satisfying a security interest created in connection with a retail installment transaction or nonfiling insurance premiums as authorized by Section 345.212;

(2) fees for registration or a certificate of title;

(3) any taxes;

(4) fees or charges prescribed by law and connected with the sale or inspection of the goods or services subject to the contract or agreement;

(5) premiums and other charges for insurance authorized by Subchapter E;

(6) official fees for a construction permit or the filing or recording of a construction permit;

(7) a documentary fee authorized under Section 345.251;

(8) in a retail installment transaction involving modernization, rehabilitation, repair, alteration, improvement, or construction of real property, reasonable and necessary costs, including amounts, paid by the holder:

(A) for title insurance or title examination and opinion that does not exceed the amount set by the commissioner of insurance for title insurance for the transaction;

(B) to a person who is not a salaried employee of the holder for an appraisal or inspection or for investigating the credit standing or creditworthiness of the retail buyer; or

(C) to an attorney who is not a salaried employee of the holder as a legal fee for the preparation of documents in connection with the transaction; and

(9) charges for a debt cancellation agreement under Chapter 354.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 1, eff.

September 1, 2017.

Sec. 345.006. TIME PRICE DIFFERENTIAL NOT INTEREST. An amount of time price differential is not interest.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.007. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a retail installment transaction.

(b) This chapter does not affect or apply to a loan made or the business of making loans under other law of this state and does not affect a rule of law applicable to a retail installment sale that is not a retail installment transaction.

(c) The provisions of this chapter defining specific rates and amounts of charges and requiring certain credit disclosures to be made control over any contrary law of this state respecting those subjects.

(d) This chapter applies to a retail installment transaction extended to a person who is located in this state at the time the transaction is entered into.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 26, eff. September 1, 2019.

Sec. 345.008. APPLICABILITY OF OTHER STATUTES TO RETAIL INSTALLMENT TRANSACTION. (a) A loan or interest statute of this state other than Chapter 303 does not apply to a retail installment transaction.

(b) Except as provided by this chapter, an applicable statute, including Title 1, Business & Commerce Code, or a principle of common law continues to apply to a retail installment transaction unless it is displaced by this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.009. DISCLOSURE REQUIREMENTS IF CONFLICT WITH FEDERAL LAW. If a disclosure requirement of this chapter and one of a federal law, including a regulation or an interpretation of law, are inconsistent or conflict, federal law controls and the inconsistent or conflicting disclosures required by this chapter need not be given.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

Sec. 345.051. RETAIL INSTALLMENT CONTRACT GENERAL REQUIREMENTS. (a) A retail installment contract must be:

(1) in writing;

(2) dated;

(3) signed by the retail buyer; and

(4) completed as to all essential provisions, except as provided by Section 345.064.

(b) The contract must be designated "Retail Installment Contract."

(c) The printed or typed part of a retail installment contract, other than instructions for completion, must be in at least eight-point type unless a different size of type is required under this subchapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.052. CONTENTS OF CONTRACT. (a) A retail installment contract must contain:

(1) the name of the retail seller and the name of the retail buyer;

(2) the place of business of the retail seller;

(3) the residence or other address of the retail buyer as specified by the retail buyer;

(4) the cash price;

(5) the amount of the retail buyer's down payment, specifying the amount paid in money and the amount allowed for goods traded in; and

(6) each itemized charge.

(b) A charge for insurance authorized under Subchapter E may

be disclosed as provided by that subchapter.

(c) A retail installment contract must reasonably identify the goods sold or services furnished under the contract. Multiple items of goods or services may be described in a separate writing in detail sufficient to identify them.

(d) The contract must contain substantially the following notice printed or typed in at least 10-point type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material:

"NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. KEEP THIS CONTRACT TO PROTECT YOUR LEGAL RIGHTS."

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.053. DISCLOSURE OF PROMISE TO COMPENSATE FOR REFERRAL. (a) A written or oral promise of a retail seller to compensate a retail buyer for referring customers or prospective customers to the seller or for referring the seller to customers or prospective customers must be disclosed in a retail installment contract if the promise is:

(1) part of the contract;

(2) made to induce the buyer to become a party to the contract; or

(3) made incidental to negotiations between the seller and the buyer with respect to the sale of the goods or services that are the subject of the contract.

(b) A contract that contains a provision required by Subsection (a) must provide that the amount owed under the contract at any time is reduced by the amount of compensation owed under the promise.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.054. TIME PRICE DIFFERENTIAL FOR CONTRACT. A retail installment contract may provide for:

(1) any amount of time price differential permitted under Section 345.055, 345.056, 345.057, or 345.058; or

(2) any rate of time price differential not exceeding a yield permitted under Section 345.055, 345.056, 345.057, or 345.058.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.055. TIME PRICE DIFFERENTIAL FOR CONTRACT PAYABLE IN EQUAL MONTHLY PAYMENTS. (a) A retail installment contract that is payable in substantially equal monthly payments beginning one month after the date of the contract may provide for a time price differential that does not exceed an add-on charge equal to:

(1) $12 per $100 per year on the part of the principal balance that is less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference amount of $500;

(2) $10 per $100 per year on the part of the principal balance that is more than the amount computed for Subdivision (1) but less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference amount of $1,000; and

(3) $8 per $100 per year on the part of the principal balance that is more than the amount computed for Subdivision (2).

(b) The time price differential is computed on the original principal balance from the date of the contract until the due date of the final installment, notwithstanding that the balance is payable in installments.

(c) If the retail installment contract is payable for a period that is shorter or longer than a year or is for an amount that is less or greater than $100, the amount of the maximum time price differential computed under this section is decreased or increased proportionately.

(d) For the purpose of a computation under this section, 15 or more days of a month may be considered a full month.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.056. USE OF OPTIONAL CEILING. As an alternative to the maximum rate or amount authorized for a time price differential under Section 345.055 or 345.057, a retail installment contract may provide for a rate or amount of time price differential that does not

exceed the rate or amount authorized by Chapter 303.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.057. TIME PRICE DIFFERENTIAL FOR OTHER CONTRACTS. A retail installment contract that is payable other than in substantially equal successive monthly payments or the first installment of which is not payable one month from the date of the contract may provide for a time price differential that does not exceed an amount that provides the same effective return as if the contract were payable in substantially equal successive monthly installments beginning one month from the date of the contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.058. MINIMUM TIME PRICE DIFFERENTIAL FOR CONTRACT. Notwithstanding Section 345.055, 345.056, or 345.057:

(1) a retail installment contract with an initial principal balance of $75 or more may provide for a minimum time price differential that does not exceed $12;

(2) a retail installment contract with an initial principal balance of more than $25 and less than $75 may provide for a minimum time price differential that does not exceed $9; and

(3) a retail installment contract with an initial principal balance of $25 or less may provide for a minimum time price differential that does not exceed $6.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.059. PRINCIPAL BALANCE COMPUTATION. The principal balance of a retail installment contract is computed by:

(1) adding the cash price subject to the contract and the total of the contract's itemized charges, including a documentary fee authorized under Section 345.251; and

(2) subtracting the amount of the retail buyer's down payment in money and goods from the amount computed under Subdivision (1).

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.060. CHARGES FOR DEFAULT IN PAYMENT OF INSTALLMENT. (a) A retail installment contract may provide that if an installment remains unpaid after the 10th day after the maturity of the installment the retail seller may collect:

(1) a delinquency charge that is not more than five percent of an installment or $5, whichever is less; or

(2) interest on the amount of the installment accruing after the maturity of the installment at a rate that does not exceed the maximum rate authorized for the contract.

(b) Only one delinquency charge may be collected under Subsection (a) on an installment regardless of the duration of the default.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.061. CHARGES FOR COLLECTING DEBT. A retail installment contract may provide for the payment of:

(1) an attorney's reasonable fees if the contract is referred for collection to an attorney who is not a salaried employee of the holder; and

(2) court costs and disbursements.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.062. ACCELERATION OF DEBT MATURITY. A retail installment contract or retail charge agreement may not authorize the holder to accelerate the maturity of all or a part of the amount owed under the contract or agreement unless:

(1) the retail buyer is in default in the performance of any of the buyer's obligations; or

(2) the holder believes in good faith that the prospect of the buyer's payment or performance is impaired.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.063. REQUIREMENTS FOR CONTRACT THAT IS MORE THAN ONE DOCUMENT. (a) A retail installment contract may be more than one document.

(b) One of the retail installment contract documents must:

(1) provide that it applies to purchases of goods or services to be made by the retail buyer from time to time; and

(2) be signed by the retail buyer.

(c) For each purchase, the document described by Subsection (b) and a written statement relating to the purchase, including a sales slip or account book, together must set forth all of the information required by this subchapter. The document described by Subsection (a) and the written statement under this subsection are the retail installment contract.

(d) If the retail seller elects, a written statement described by Subsection (c) satisfies the statement requirements of Section 345.082 for a purchase to which the statement applies.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.064. COMPLETION OF CONTRACT. (a) A person may not sign a retail installment contract that contains a blank space for an item that is an essential provision of the transaction.

(b) If delivery of the goods is not made at the time the contract is executed, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted by the retail seller in the seller's counterpart of the contract after the contract has been signed by the retail buyer.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.065. DELIVERY OF COPY OF CONTRACT. The retail seller shall:

(1) deliver to the retail buyer a copy of the retail installment contract as accepted by the retail seller; or

(2) mail to the retail buyer at the address shown on the contract a copy of the retail installment contract as accepted by the retail seller.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.066. BUYER'S RIGHT TO RESCIND CONTRACT. Until a retail seller complies with Section 345.065, a retail buyer who has not received delivery of the goods or services is entitled to:

(1) rescind the contract;

(2) receive a refund of all payments made under or in contemplation of the contract; and

(3) receive the return of all goods traded in to the seller under or in contemplation of the contract or, if those goods cannot be returned, receive the trade-in allowance of those goods.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.067. BUYER'S ACKNOWLEDGMENT OF DELIVERY OF CONTRACT COPY. (a) Any retail buyer's acknowledgment of delivery of a copy of a retail installment contract must:

(1) be in at least 10-point type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material; and

(2) appear directly above the buyer's signature if the acknowledgment is contained in the contract.

(b) Any retail buyer's acknowledgment conforming to this section of the delivery of a copy of the retail installment contract is, in any action or proceeding:

(1) presumptive proof of the delivery of a copy of the contract and compliance with any requirement relating to the completion of the contract before execution of the contract by the buyer; or

(2) conclusive proof of the delivery of a copy of the contract and compliance with any requirement relating to the completion of the contract before execution of the contract by the buyer if the holder purchased the contract without knowledge to the contrary.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.068. BAILMENT OR LEASE AS RETAIL INSTALLMENT TRANSACTION. A bailment or lease is a retail installment transaction

if the bailee or lessee:

(1) contracts to pay as compensation for the use of goods an amount that substantially equals or exceeds the value of those goods; and

(2) on full compliance with the bailment or lease is bound to become the owner of the goods or has the option to become the owner of the goods for no or nominal additional consideration.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.069. DEFERMENT OF INSTALLMENT. (a) A holder of a retail installment contract, on request of the retail buyer, may agree to defer the scheduled due date of all or part of one or more installments.

(b) A holder may collect from the retail buyer for deferment of an installment:

(1) a charge that is a part of the time price differential and computed on the amount deferred for the period of deferment at the monthly rate of 15 cents for each $10; and

(2) the amount of the additional cost to the holder for:

(A) premiums for continuing in force any insurance provided for by the contract; and

(B) additional necessary official fees.

(c) The minimum charge under Subsection (b)(1) is $1.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.070. AMENDMENT OF CONTRACT. (a) On request of the retail buyer, the holder of a retail installment contract may:

(1) amend the contract to renew, restate, or reschedule the unpaid balance of the contract; and

(2) collect an amount computed on the principal balance of the amended contract for the term of the amended contract at the applicable rate under Section 345.055, 345.056, 345.057, or 345.058.

(b) The principal balance of the amended contract is computed by:

(1) adding:

(A) the amount of the unpaid balance on the date of the amendment;

(B) the cost of insurance;

(C) the amount of each additional necessary official fee; and

(D) the amount of each accrued delinquency charge; and

(2) subtracting from the total computed under Subdivision (1) an amount equal to the minimum refund credit that would be required under Section 345.075 or 345.076 for prepayment in full on the date of the amendment.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.071. CONFIRMATION OF AMENDMENT. An amendment to a retail installment contract must be confirmed in a writing signed by the retail buyer. The holder shall deliver a copy of the confirmation to the buyer at the time it is executed.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.072. CONTRACT AFTER AMENDMENT. After amendment a retail installment contract is the original contract and each amendment to the original contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.073. PREPAYMENT OF CONTRACT. A retail buyer may prepay the unpaid time balance of a retail installment contract in full at any time before the contract's final due date.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.074. REFUND CREDIT ON PREPAYMENT. If a retail buyer prepays a retail installment contract in full or if the holder demands payment of the unpaid balance of the contract in full before the contract's final installment is due, the buyer is entitled to receive a refund credit as provided by Section 345.075 or 345.076, as applicable.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.075. AMOUNT OF REFUND CREDIT FOR MONTHLY INSTALLMENT CONTRACT. (a) The minimum amount of a refund credit on prepayment of a contract that is payable in substantially equal successive monthly installments beginning one month after the date of the contract is computed by:

(1) subtracting an amount equal to the minimum charge authorized by this chapter for that contract from the original time price differential; and

(2) multiplying the amount computed under Subdivision (1) by the percentage computed by dividing the sum of all of the monthly balances under the contract's schedule of payments into the sum of the unpaid monthly balances under the contract's schedule of payments beginning on:

(A) the first day, after the date of the prepayment or demand for payment in full, that is the date of a month that corresponds to the date of the month that the first installment is due under the contract; or

(B) if the prepayment or demand for payment in full is made before the first installment date under the contract, the next monthly anniversary date of the contract occurring after prepayment or demand.

(b) A refund credit is not required if the amount of the refund credit is less than $1.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.076. AMOUNT OF REFUND CREDIT FOR OTHER CONTRACTS. The refund credit on a contract to which Section 345.075 does not apply shall be computed in a manner proportionate to the method set out by that section, having due regard for:

(1) the amount of each installment; and

(2) the irregularity of the installment periods.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.077. REINSTATEMENT OF CONTRACT. After a demand for

payment in full under a retail installment contract, the retail buyer and holder may agree to reinstate the contract and may amend the contract under Section 345.070.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.078. CONSOLIDATION OF CONTRACTS. (a) If a retail buyer purchases goods or services in a retail installment transaction from a retail seller from whom the buyer has previously purchased goods or services under one or more retail installment contracts and the amounts under those contracts have not been paid in full, the seller may consolidate the subsequent purchase with one or more of the contracts.

(b) If a purchase is consolidated with a retail installment contract under this section, the retail seller may prepare a written memorandum of the subsequent purchase instead of executing a retail installment contract for the purchase. Sections 345.051, 345.052, 345.053, 345.065, 345.066, and 345.067 do not apply to the memorandum. The seller shall deliver a copy of the memorandum to the retail buyer before the date on which the first installment under the consolidated contract is due.

(c) Each subsequent purchase that is consolidated with a retail installment contract is a separate retail installment contract under this chapter. The provisions of this chapter relating to a retail installment contract apply to the subsequent purchase except as provided by Subsection (b).

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.079. ALLOCATION OF PAYMENTS ON CONSOLIDATION OF CONTRACTS. (a) If a subsequent purchase is consolidated with a contract and the retail seller retains title or takes a security interest, including a lien, in any of the goods purchased under one of the contracts:

(1) the total of all payments made before the subsequent purchase is considered to have been applied to the previous purchases; and

(2) each payment made on the consolidated contract after the subsequent purchase is considered to be allocated to each

purchase in the same ratio as the original cash price of the purchase bears to the total of the original cash prices of all purchases under the contract.

(b) All of a down payment on a subsequent purchase shall be allocated to that purchase.

(c) If the amount of installment payments is increased after a subsequent purchase, the retail seller may elect to allocate:

(1) an amount of the payment equal to the original periodic payment to the previous purchase; and

(2) the remainder of the payment to the subsequent purchase.

(d) This section does not apply if the previous and subsequent purchases involve:

(1) goods, including equipment or parts, attached or affixed to goods previously purchased and for which full payment has not been made; or

(2) services rendered by the retail seller at the retail buyer's request in connection with goods described by Subdivision (1).

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.080. OBLIGATION UNDER MORE THAN ONE CONTRACT. (a) A retail seller may not induce a person or a husband and wife to become obligated at substantially the same time under more than one retail installment contract with the same seller for the deliberate purpose of obtaining a greater amount of time price differential than is permitted under this chapter for one retail installment contract.

(b) A contract made by a retail buyer and retail seller after the 30th day after the date of a contract between that buyer and seller is presumed not to violate this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.081. CERTIFICATE OF COMPLETION OR SATISFACTION OF CONTRACT. (a) A retail seller who has entered into a retail installment transaction under a retail installment contract to perform services or install goods for the modernization, rehabilitation, repair, alteration, improvement, or construction of

improvements on real property shall obtain a certificate of completion or certificate of satisfaction signed by the retail buyer when all of the services have been performed or goods have been installed as required under the contract. A certificate is required regardless of whether a guaranty or warranty of the services or goods remains in force.

(b) A certificate of completion or certificate of satisfaction must be a separate writing and must have at the top in at least 10-point type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material:

WARNING TO BUYER--DO NOT SIGN THIS CERTIFICATE UNTIL ALL SERVICES HAVE BEEN SATISFACTORILY PERFORMED AND MATERIALS SUPPLIED OR GOODS RECEIVED AND FOUND SATISFACTORY.

(c) The retail seller shall keep the signed certificate or a copy of the signed certificate until the second anniversary of the date of the certificate's execution.

(d) If performance of the services or installation of the goods required by the retail installment contract is not complete, a retail seller may not knowingly:

(1) induce a retail buyer to sign a certificate; or

(2) take or accept from the retail buyer an executed certificate.

(e) Execution of a certificate by the retail buyer is not a waiver of any guaranty or warranty made by the retail seller or a manufacturer or supplier.

(f) A retail buyer's failure or refusal to execute a certificate, without good cause, does not affect the validity of the retail installment contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.082. STATEMENT OF PAYMENTS AND AMOUNT DUE UNDER CONTRACT. (a) On written request of a retail buyer, the holder of a retail installment contract shall give or send to the buyer a written statement of the dates and amounts of installment payments and the total amount unpaid under the contract.

(b) A retail buyer is entitled to one statement without charge during a six-month period. The charge for each additional requested

statement during the period may not exceed $1.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.083. RECEIPT FOR CASH PAYMENT. A holder of a retail installment contract shall give to the retail buyer a written receipt for each cash payment.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.084. DEBT CANCELLATION AGREEMENT. A debt cancellation agreement under Chapter 354 may be offered in connection with a retail installment contract for a covered vehicle to which this chapter applies. For purposes of this section, "covered vehicle" has the meaning assigned by Section 354.001.

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 2, eff. September 1, 2017.

SUBCHAPTER C. RETAIL CHARGE AGREEMENT

Sec. 345.101. MAKING RETAIL CHARGE AGREEMENT. On the request of a retail buyer or prospective buyer, a retail seller or credit card issuer may establish a retail charge agreement.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.102. AGREEMENT GENERAL REQUIREMENTS. (a) A retail charge agreement must be in writing and signed by the retail buyer.

(b) An agreement must contain substantially the following notice printed or typed in at least 10-point type that is bold-faced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material:

"NOTICE TO THE BUYER--DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE AGREEMENT YOU SIGN. KEEP THIS AGREEMENT TO PROTECT YOUR LEGAL RIGHTS."

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.103. TIME PRICE DIFFERENTIAL FOR AGREEMENT. (a) Notwithstanding any other law a retail charge agreement may provide for a time price differential for the payment in installments under the agreement.

(b) The time price differential may not be more than the amount computed on the unpaid amount under the retail charge agreement at a rate equal to:

(1) 15 cents per $10 per month on the part of the unpaid balance that is equal to or less than the amount computed under Subchapter C, Chapter 341, using the reference amount of $500; and

(2) 10 cents per $10 per month on the part of the unpaid balance that is more than the amount computed for Subdivision (1).

(c) If the amount computed under Subsection (b) for any month for which a balance is due is less than 75 cents, the time price differential for that month may be 75 cents.

(d) If the period between installment payments is not a month, the time price differential shall be computed proportionately.

(e) The time price differential may be computed for all unpaid balances within a $10 range by applying the amount of the time price differential for the median amount within the range to those unpaid balances.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.104. USE OF OPTIONAL CEILING. (a) As an alternative to the maximum rate or amount authorized for a time price differential under Section 345.103, a retail charge agreement may provide for a rate or amount of time price differential that does not exceed the rate or amount authorized by Chapter 303.

(b) The provisions of Chapter 303 applicable to open-end accounts apply to a retail charge agreement to which this section applies.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.16, eff. September 1, 2005.

Sec. 345.105. CHARGES FOR COLLECTION OF PAYMENT OF AGREEMENT. A retail charge agreement may provide for the payment of:

(1) an attorney's reasonable fee if the agreement is referred for collection to an attorney who is not a salaried employee of the holder; and

(2) court costs and disbursements.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.106. PROCESSING FEE FOR RETURNED CHECK. A retail charge agreement may provide that the holder of the agreement may:

(1) charge the retail buyer, on return of a dishonored check given in payment under the agreement, a reasonable processing fee that is not more than $15; and

(2) add the fee to the unpaid balance under the agreement.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.107. PROHIBITED FEES. An annual, membership, or participation fee may not be charged to or collected from a retail buyer in connection with a retail charge agreement.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.108. PROHIBITION ON SIGNING OF AGREEMENT WITH BLANK SPACES. A retail buyer may not sign a retail charge agreement that contains blank spaces.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.109. DELIVERY OF COPY OF AGREEMENT. (a) A retail seller or credit card issuer shall deliver or mail a copy of the executed retail charge agreement to the retail buyer before the date on which the first payment under the agreement is due.

(b) If a copy of the retail charge agreement is not retained by

the retail seller, a notation in the seller's permanent record showing that the agreement was mailed and the date of mailing is presumptive proof of the mailing.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.110. BUYER'S ACKNOWLEDGMENT OF DELIVERY OF AGREEMENT COPY. (a) Any retail buyer's acknowledgment of delivery of a copy of a retail charge agreement that is contained in the body of the agreement must:

(1) be in at least 10-point type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material; and

(2) appear directly above the buyer's signature.

(b) A retail buyer's acknowledgment, conforming to this section, of delivery of a copy of the agreement is, in an action or proceeding, presumptive proof that:

(1) the copy was delivered to the buyer; and

(2) the agreement did not contain a blank space when it was signed by the buyer.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.111. STATEMENT OF CASH PRICE. The cash price in a retail installment transaction under a retail charge agreement shall be stated in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with the agreement.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.112. AGREEMENT BALANCE STATEMENT. (a) At the end of each statement period of a retail charge agreement in which an unpaid balance exists, the retail seller shall provide to the retail buyer a statement of the unpaid balance.

(b) The statement must set out that the retail buyer at any time may pay all or any part of the unpaid balance.

(c) In this section, "statement period" means a monthly period, which is not required to be a calendar month. The term may include a

regular period, other than a monthly period, to which the retail charge agreement parties agree in writing.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.113. COMPLIANCE WITH FEDERAL LAW CONSIDERED COMPLIANCE WITH CHAPTER'S DISCLOSURE REQUIREMENTS. A retail charge agreement that complies with the applicable disclosure provisions of the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) is considered to comply with the disclosure requirements of Section 345.112.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER D. ALTERNATE FINANCE CHARGE CEILING

Sec. 345.155. TIME PRICE DIFFERENTIAL COMPUTATION AND AMOUNT. (a) A time price differential authorized under Subchapter C shall be computed using the average daily balance method.

(b) If the amount of a time price differential otherwise authorized under Subchapter C for a billing cycle in which a balance is due is less than 75 cents a month, the holder may charge an amount that does not exceed 75 cents a month.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1182 (H.B. 3453), Sec. 7, eff. September 1, 2011.

Sec. 345.156. WHEN CHARGING OF TIME PRICE DIFFERENTIAL PROHIBITED. A time price differential may not be charged for a billing cycle of a retail charge agreement that provides for a time price differential under this subchapter if:

(1) the payments received for the agreement and amounts credited during the billing cycle that are attributable to amounts included in the balance owed at the end of the preceding billing cycle equal or exceed the balance owed under the agreement at the end of the preceding billing cycle; or

(2) a balance is not owed at the end of the preceding

billing cycle.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.157. DELINQUENCY CHARGE. (a) A retail charge agreement may provide for the payment of:

(1) a delinquency charge on each installment that is in default for a period that is longer than 21 days;

(2) an attorney's reasonable fee if the agreement is referred for collection to an attorney who is not a salaried employee of the holder; and

(3) court costs and disbursements.

(b) The amount of a delinquency charge may not exceed $15.

(c) Only one delinquency charge may be collected on an installment regardless of the duration of the default.

(d) The holder shall remit 50 cents of each delinquency charge in excess of $10 collected under this section to the comptroller, in the time and manner established by the comptroller, for deposit to the credit of an account in the general revenue fund. One-half of the money in the account may be appropriated only to finance research conducted by the commissioner under Section 11.305 and the other one-half of the money in the account may be appropriated only to finance educational activities and counseling services under Section 394.001.

(e) A customer's monthly statement must contain the following notice printed or typed in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material: "A DELINQUENCY CHARGE OF $15 MAY BE ASSESSED FOR A PAYMENT THAT IS IN DEFAULT FOR A PERIOD THAT IS LONGER THAN 21 DAYS."

(f) If the commissioner determines that a retail seller or creditor that was operating under this subchapter on September 1, 1999, and that charges a delinquency charge in excess of $10, moved its credit operations out of this state after September 1, 1999, in a manner that results in the retail seller's or creditor's retail charge agreements not being subject to this subchapter, the commissioner shall collect from the retail seller or creditor an amount equal to 25 cents for each delinquency charge in excess of $10 collected during the 12-month period preceding the date of the move.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended

by Acts 1999, 76th Leg., ch. 1348, Sec. 4, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1182 (H.B. 3453), Sec. 8, eff. September 1, 2011.
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 27, eff. September 1, 2019.

Sec. 345.158. RETAIL CHARGE AGREEMENT TO WHICH SUBCHAPTER DOES NOT APPLY. This subchapter does not apply to a retail charge agreement that:

(1) is a home solicitation transaction that is subject to Chapter 601, Business & Commerce Code;

(2) is secured by a lien on the obligor's homestead; and

(3) provides for credit that is extended by the retail seller or the seller's owner, subsidiary, or corporate affiliate.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.18, eff. April 1, 2009.

SUBCHAPTER E. INSURANCE

Sec. 345.201. PROPERTY INSURANCE. (a) A holder may request or require a retail buyer to insure the property purchased or improved under a retail installment transaction, including the purchase of title insurance on real property that is involved in the retail installment contract or retail charge agreement and that is subject to a security interest of the holder, including a lien.

(b) If the property is a boat that may be enrolled or licensed as a yacht with the United States Coast Guard and subject to the maritime laws of the United States, a holder may also require a retail buyer to provide in connection with the boat:

(1) protection and indemnity insurance;

(2) longshoremen's and harbor worker's compensation insurance; and

(3) medical payments insurance.

(c) The insurance and the premiums or charges for the insurance must bear a reasonable relationship to:

(1) the amount, term, and conditions of the retail installment contract or retail charge agreement;

(2) the existing hazards or risk of loss, damage, or destruction; or

(3) the potential liability.

(d) The insurance may not:

(1) cover unusual or exceptional risks; or

(2) provide coverage not ordinarily included in policies issued to the public.

(e) The holder may include the cost of insurance provided under this section as a separate charge in the contract or agreement.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.202. CREDIT LIFE, CREDIT HEALTH AND ACCIDENT, AND CREDIT INVOLUNTARY UNEMPLOYMENT INSURANCE. (a) As additional protection for the contract or agreement, a holder may:

(1) request or require a retail buyer to provide credit life insurance and credit health and accident insurance; and

(2) request or allow a retail buyer to provide credit involuntary unemployment insurance.

(b) A holder may include the cost of insurance provided under Subsection (a) as a separate charge in the contract or agreement.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.203. MAXIMUM AMOUNT OF INSURANCE COVERAGE. (a) At any time the total amount of the policies of credit life insurance in force on one retail buyer on one retail installment contract or retail charge agreement may not exceed:

(1) the total amount repayable under the contract or agreement; and

(2) the greater of the scheduled or actual amount of unpaid indebtedness if the indebtedness is repayable in substantially equal installments.

(b) At any time the total amount of the policies of credit health and accident insurance or credit involuntary unemployment insurance in force on one retail buyer on one retail installment contract or retail charge agreement may not exceed the total amount

repayable under the contract or agreement, and the amount of each periodic indemnity payment may not exceed the scheduled periodic payment on the indebtedness.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.204. INSURANCE STATEMENT. (a) If insurance is required in connection with a retail installment contract or retail charge agreement, the holder shall give to the retail buyer a statement that clearly and conspicuously states that:

(1) insurance is required in connection with the contract or agreement; and

(2) the buyer as an option may furnish the insurance through:

(A) an existing policy of insurance owned or controlled by the buyer; or

(B) an insurance policy obtained from an insurance company authorized to do business in this state.

(b) If requested or required insurance is sold or obtained by the holder and the retail installment contract or retail charge agreement includes a premium or rate of charge that is not fixed or approved by the commissioner of insurance, the holder shall deliver or mail to the retail buyer a written statement that includes that fact.

(c) A statement under Subsection (a) or (b) may be provided with or as part of the retail installment contract or the retail charge agreement, as appropriate, or separately.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.205. INSURANCE MAY BE FURNISHED BY BUYER. (a) If insurance is requested or required in connection with a retail installment contract or retail charge agreement and the retail installment contract or retail charge agreement includes a premium or rate of charge that is not fixed or approved by the commissioner of insurance, the retail buyer is entitled to furnish the insurance coverage not later than the 10th day after the date of the contract or agreement or the delivery or mailing of the written statement required under Section 345.204, as appropriate, through:

(1) an existing insurance policy owned or controlled by the buyer; or

(2) an insurance policy obtained from an insurance company authorized to do business in this state.

(b) When a retail installment contract or retail charge agreement is executed, the retail buyer is entitled to purchase the insurance described by Section 345.201, 345.202, or 345.207 and select:

(1) the agent or broker; and

(2) an insurance company acceptable to the holder.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.206. BUYER'S FAILURE TO PROVIDE EVIDENCE OF INSURANCE. (a) If the retail buyer fails to present to the holder reasonable evidence that the buyer has obtained or maintained a coverage required by the retail installment contract or retail charge agreement, the holder may:

(1) obtain substitute insurance coverage that is substantially equivalent to or more limited than the coverage required; and

(2) add the amount of the premium advanced for the substitute coverage to the unpaid balance of the contract or agreement.

(b) Substitute insurance coverage under Subsection (a)(1):

(1) may be limited to coverage only of the interest of the holder or the interest of the holder and the buyer; and

(2) must be written at lawful rates and in accordance with the Insurance Code by a company authorized to do business in this state.

(c) If substitute insurance is obtained by the holder under Subsection (a), the amendment adding the premium or rescheduling the contract is not required to be signed by the retail buyer. The holder shall deliver to the buyer or send to the buyer's most recent address shown in the records of the holder specific written notice that the holder has obtained substitute insurance.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.207. CHARGES FOR OTHER INSURANCE INCLUDED IN RETAIL INSTALLMENT CONTRACT. A retail buyer and retail seller may agree in a retail installment contract to include charges for insurance coverage that is:

(1) for risk of loss or liability reasonably related to:

(A) the goods or services sold;

(B) the anticipated use of the goods or services sold; or

(C) goods or services that:

(i) are related to the goods or services sold; and

(ii) may be insured with the goods and services sold;

(2) written on policies or endorsement forms prescribed or approved by the commissioner of insurance; and

(3) ordinarily offered in policies or endorsements offered to the public.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.208. REQUIREMENTS FOR INCLUDING INSURANCE CHARGE IN CONTRACT OR AGREEMENT. (a) For insurance to be included as an itemized charge in a retail installment contract or a retail charge agreement:

(1) the insurance must be written:

(A) at lawful rates;

(B) in accordance with the Insurance Code; and

(C) by a company authorized to do business in this state; and

(2) the disclosure requirements of this section must be satisfied.

(b) If the insurance is described by Section 345.201, 345.202, or 345.207, the retail installment contract or retail charge agreement, or a separate written statement or specimen copy of a certificate or policy of insurance that is given to the retail buyer, must identify the:

(1) type of the coverage;

(2) term of the coverage; and

(3) amount of the premium for the coverage.

(c) If the insurance is described by Section 345.207, the

retail installment contract must also clearly indicate that the coverage is optional.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.209. DELIVERY OF INSURANCE DOCUMENT TO BUYER. A holder who obtains insurance shall, not later than the 45th day after the date of the delivery of goods or the furnishing of services under a retail installment contract or retail charge agreement, deliver, mail, or cause to be mailed to the retail buyer at the buyer's address specified in the contract or agreement a policy or certificate of insurance that clearly sets forth:

(1) the amount of the premium;

(2) the kind of insurance provided;

(3) the coverage of the insurance; and

(4) all terms, including options, limitations, restrictions, and conditions, of the policy.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.210. HOLDER'S DUTY IF INSURANCE IS ADJUSTED OR TERMINATED. (a) If insurance for which a charge is included in or added to a retail installment contract or retail charge agreement is canceled, adjusted, or terminated, the holder shall, at the holder's option:

(1) apply the amount of the refund for unearned insurance premiums received by the holder to replace required insurance coverage; or

(2) credit the refund to the final maturing installments of the retail installment contract or retail charge agreement.

(b) If the amount to be applied or credited under Subsection (a) is more than the amount unpaid on the retail installment contract or retail charge agreement, the holder shall refund to the retail buyer the difference between those amounts.

(c) A cash refund is not required under this section if the amount of the refund is less than $1.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.211. GAIN OR ADVANTAGE FROM INSURANCE NOT ADDITIONAL CHARGE. Any gain or advantage to the holder or the holder's employee, officer, director, agent, general agent, affiliate, or associate from insurance or the provision or sale of insurance under this subchapter is not an additional charge or additional time price differential in connection with a retail installment contract or retail sales agreement made under this chapter except as specifically provided by this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.212. NONFILING INSURANCE. (a) Instead of charging fees for the filing, recording, and releasing of documents for the perfection of a security interest created in connection with a retail installment transaction, the holder may include in the retail installment contract or retail charge agreement a charge for a nonfiling insurance premium.

(b) The amount of a charge under Subsection (a) may not exceed the amount of fees authorized for filing and recording an original financing statement in the standard form prescribed by the secretary of state.

(c) A holder may receive a charge authorized by this section only if the holder purchases nonfiling insurance in connection with the retail installment transaction.

(d) A holder is not required to furnish to a retail buyer a policy or certificate of insurance evidencing nonfiling insurance.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.213. INCLUSION OF INSURANCE PREMIUMS. A retail seller may include any type of insurance premium in the billing of its accounts if:

(1) a charge, other than the premium, is not made to the retail buyer in connection with that inclusion; and

(2) a charge is not made and a premium is not charged under a retail credit agreement when there is no monthly balance or the monthly balances are paid in full.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.214. ADDING TO RETAIL INSTALLMENT CONTRACT PREMIUMS FOR INSURANCE ACQUIRED AFTER TRANSACTION. (a) A retail buyer and holder may agree to add to the unpaid balance of a retail installment contract premiums for insurance policies covering goods or services sold in a prior retail installment transaction under the contract or goods or services related to those goods or services, including premiums for the renewal of a policy included in the contract.

(b) A policy of insurance described by Subsection (a) must comply with the applicable requirements of Sections 345.201, 345.203, 345.207, and 345.208.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.215. EFFECT OF ADDING PREMIUM TO CONTRACT OR AGREEMENT. (a) If a premium is added to the unpaid balance of a retail installment contract under Section 345.206 or 345.214, the rate of time price differential agreed to in the retail installment contract remains in effect and shall be applied to the new unpaid balance or the contract may be rescheduled in accordance with Section 345.070.

(b) If a premium is added under a retail charge agreement, the premium shall be added to the unpaid balance under the agreement.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER F. SPECIAL FEES AND FINANCE RATES

Sec. 345.251. DOCUMENTARY FEE FOR CERTAIN VEHICLES. (a) A retail seller may charge a documentary fee for services rendered to, for, or on behalf of a retail buyer in handling and processing documents relating to the sale of a motorcycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle.

(b) If a documentary fee is charged under this section the fee:

(1) must be charged to cash buyers and credit buyers;

(2) may not exceed a reasonable amount agreed to by the retail seller and retail buyer for the documentary services, subject to a reasonable maximum amount set by rule by the finance commission;

and

(3) must be disclosed on the buyer's order or retail installment contract as a separate itemized charge.

(c) A preliminary work sheet on which a sale price is computed and that is shown to the retail buyer, an order from the buyer, or a retail installment contract must include in reasonable proximity to the place on the document where the documentary fee is disclosed:

(1) the amount of the fee; and

(2) the following notice in type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material:

"A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS RELATING TO THE SALE. A DOCUMENTARY FEE MAY NOT EXCEED A REASONABLE AMOUNT AGREED TO BY THE PARTIES THAT IS NOT MORE THAN THE MAXIMUM AMOUNT ALLOWED BY THE STATE. THIS NOTICE IS REQUIRED BY LAW."

(d) If the language primarily used in an oral sales presentation is not the same as the language in which the retail installment contract is written, the retail seller shall furnish to the retail buyer a written statement containing the notice set out in Subsection (c) in the language primarily used in the oral sales presentation.

(e) The finance commission may adopt rules necessary to implement and enforce this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 43 (S.B. 1248), Sec. 1, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 882 (H.B. 3171), Sec. 2.01, eff. September 1, 2019.

Sec. 345.252. TIME PRICE DIFFERENTIAL FOR CERTAIN PREPAID FUNERAL BENEFITS. Prepaid funeral benefits regulated under Chapter 154 may be financed only at rates authorized by Chapter 303.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.253. TIME PRICE DIFFERENTIAL FOR MEDICAL AND DENTAL SERVICES. Medical or dental services may be financed only at rates authorized by Chapter 303.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER G. ACQUISITION OF CONTRACT, AGREEMENT, OR BALANCE

Sec. 345.301. AUTHORITY TO ACQUIRE. Notwithstanding any other law, a person may acquire a retail installment contract or retail charge agreement or an outstanding balance under a contract or agreement from another person on the terms, including the price, to which they agree.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.302. LACK OF NOTICE DOES NOT AFFECT VALIDITY AS TO CERTAIN CREDITORS. Notice to a retail buyer of an assignment or negotiation of a retail installment contract or retail charge agreement or an outstanding balance under a contract or agreement or a requirement that the retail seller be deprived of dominion over payments on a contract or agreement or over the goods if returned to or repossessed by the seller is not necessary for a written assignment or negotiation of the contract or agreement or an outstanding balance under the contract or agreement to be valid as against a creditor, subsequent purchaser, pledgee, mortgagee, or lien claimant of the seller.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.303. PAYMENT BY BUYER. Unless a retail buyer has notice of the assignment or negotiation of the buyer's retail installment contract or retail charge agreement or an outstanding balance under the contract or agreement, a payment by the buyer to the holder last known to the buyer is binding on all subsequent holders.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.304. PRESERVATION OF BUYER'S RIGHT OF ACTION OR DEFENSE. (a) A right of action or defense of a retail buyer arising out of a retail installment transaction is not affected by the negotiation of the retail installment contract or retail charge agreement to a third party except as authorized by other law and the third party:

(1) acquires the contract relying in good faith on a certificate of completion or certificate of satisfaction, if required by Section 345.081;

(2) gives notice of the negotiation to the buyer under Subsection (b); and

(3) does not receive from the buyer, before the 31st day after the day on which that notice is mailed, written notice of a fact that gives rise to a claim or defense of the buyer.

(b) A notice of negotiation must:

(1) be in writing addressed to the retail buyer at the address shown on the contract;

(2) identify the contract;

(3) state the names and addresses of the retail seller and retail buyer;

(4) describe the goods or services;

(5) state the time balance and a description of the payment schedule; and

(6) contain the following warning in at least 10-point type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material:

ARE THE TERMS OF THE CONTRACT DESCRIBED ABOVE CORRECT AND ARE YOU SATISFIED WITH THE GOODS OR SERVICES FURNISHED? IF NOT, YOU SHOULD NOTIFY US GIVING DETAILS WITHIN 30 DAYS FROM THE DATE THE ABOVE NOTICE WAS MAILED.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER H. OTHER PROVISIONS APPLICABLE TO CONTRACTS AND AGREEMENTS

Sec. 345.351. REGISTRATION OF HOLDER. (a) A holder who is not an authorized lender under Chapter 342 or a credit union shall:

(1) register with the Office of Consumer Credit Commissioner; and

(2) pay a fee of $10 for each location at which a retail

installment transaction is originated, serviced, or collected.

(b) Subject to Section 14.112, the finance commission by rule may establish procedures to facilitate the registration and collection of fees under this section.

(c) A registration issued under this section is valid for the period prescribed by finance commission rule adopted under Section 14.112.

(d) The commissioner may refuse to renew the registration of a holder who fails to comply with an order issued by the commissioner to enforce this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 96, eff. Sept. 1, 2001. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 28, eff. September 1, 2019.

Sec. 345.352. SELLER'S PROMISE TO PAY OR TENDER OF CASH TO BUYER AS PART OF TRANSACTION. A retail seller may not promise to pay, pay, or otherwise tender cash to a retail buyer as a part of a transaction under this chapter unless specifically authorized by this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.353. MAKING OF CONTRACT OR AGREEMENT BY MAIL OR TELEPHONE. The designation requirement of Section 345.051(b) and the notice requirement of Section 345.052(d) do not apply to a sale under a retail installment contract or retail charge agreement negotiated and entered into by mail or telephone without solicitation in person by a salesperson or other representative of the retail seller if the contract or agreement is based on a printed solicitation, including a catalog of the seller, that clearly sets forth the cash price of sales to be made through the printed solicitation.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.354. PROHIBITION ON POWER OF ATTORNEY TO CONFESS

JUDGMENT AND ASSIGNMENT OF WAGES. A retail installment contract or retail charge agreement may not contain:

(1) a power of attorney to confess judgment; or

(2) an assignment of wages.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.355. PROHIBITION ON CERTAIN ACTS OF REPOSSESSION. A retail installment contract or retail charge agreement may not:

(1) authorize the holder or a person acting on the holder's behalf to:

(A) enter the retail buyer's premises unlawfully; or

(B) commit a breach of the peace in the repossession of goods; or

(2) provide for the retail buyer to execute a power of attorney appointing, as the buyer's agent in the repossession of goods, the holder or a person acting on the holder's behalf.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.356. BUYER'S WAIVER. (a) A retail installment contract or retail charge agreement may not:

(1) provide for a waiver of the retail buyer's rights of action against the holder or a person acting on the holder's behalf for an illegal act committed in:

(A) the collection of payments under the contract or agreement; or

(B) the repossession of goods; or

(2) provide that the retail buyer agrees not to assert against the retail seller a claim or defense arising out of the sale.

(b) A retail buyer may not waive any provision of this chapter before or at the time of the making of a retail installment contract, retail charge agreement, or purchase under the contract or agreement.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.357. PROHIBITION ON CERTAIN LIENS. A retail installment contract or retail charge agreement may not provide for a

first lien on real property to secure the obligation, other than a lien:

(1) created by law on the recording of an abstract of judgment; or

(2) provided for or granted by a contract or series of contracts for the sale or construction and sale of a structure to be used as a residence if the time price differential provided in the contract or agreement does not exceed an annual percentage rate permitted under this chapter or Chapter 303.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 346. REVOLVING CREDIT ACCOUNTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 346.001. DEFINITIONS. In this chapter:

(1) "Billing cycle" means the interval between periodic billing statements.

(2) "Credit card" means a card, confirmation, or identification or check or other written request by which a customer obtains access to a revolving credit account.

(3) "Creditor" means an authorized lender who directly or through another who honors a credit card issued by the person, extends credit, including money loaned, to a customer under an agreement that provides for the use of a credit card.

(4) "Customer" means a person who has accepted a revolving credit account.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 346.002. AVERAGE DAILY BALANCE. (a) The average daily balance of a revolving credit account is computed by:

(1) adding all of the ending balances in the account during each day of a billing cycle; and

(2) dividing the total under Subdivision (1) by the number of days in the billing cycle.

(b) For purposes of Subsection (a), a day's ending balance is computed by:

(1) adding the previous day's ending balance and the amount of each loan, lease of goods, or purchase of goods or services posted

to the account on the day for which the ending balance is being computed; and

(2) subtracting from the result under Subdivision (1) each credit or payment posted to the account on the day for which the ending balance is being computed.

(c) A day's ending balance may not include interest.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 346.003. REVOLVING CREDIT ACCOUNTS. (a) A revolving credit account is an open-end account:

(1) that is established by a creditor for a customer under a written agreement between the creditor and the customer;

(2) that the customer accepts by using the account; and

(3) under which:

(A) the unpaid balance of and interest on the extensions of credit are debited to the account;

(B) interest is not precomputed but may be computed on the balances of the account outstanding from time to time;

(C) the customer may defer payment of any part of the balance of the account; and

(D) the customer may obtain from the creditor one or more extensions of credit as described by Subsection (b) or (c).

(b) A revolving loan account is a revolving credit account under which a customer may obtain a loan from a creditor.

(c) A revolving triparty account is a revolving credit account under which:

(1) a customer may use a credit card to:

(A) obtain a loan from a creditor, with the advance made by the creditor or a person participating with the creditor;

(B) lease goods from a person participating with the creditor; or

(C) purchase goods or services from a person participating with the creditor;

(2) the creditor is obligated to pay the participating person; and

(3) the customer is obligated to pay the creditor the amount of the loan or cost of the lease or purchase.

(d) Interest may be computed on the balance of the account from

time to time.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 346.004. APPLICATION OF CHAPTER TO REVOLVING CREDIT ACCOUNTS. (a) Unless the contract for the account provides otherwise, this chapter applies to a revolving credit account described by Section 346.003 if the loan or extension of credit is extended primarily for personal, family, or household use to a person who is located in this state at the time the loan is made or the extension of credit is entered into.

(b) Unless the contract for the account provides that this chapter applies, this chapter does not apply to a revolving credit account described by Section 346.003 if the loan or extension of credit is for business, commercial, investment, or similar purposes.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.17, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 29, eff. September 1, 2019.

Sec. 346.005. APPLICATION OF OTHER CODE PROVISIONS. (a) A revolving credit account is subject to Chapters 303 and 349 but is not subject to another chapter of this title unless specifically provided by this chapter.

(b) A creditor in a revolving credit account under this chapter for personal, family, or household use must hold a license under Chapter 342, unless the person is not required to obtain a license under Section 342.051.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 887, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER B. INTEREST CHARGE AND FEES

Sec. 346.101. MAXIMUM INTEREST RATE. (a) A revolving credit account may provide for interest on an account at an annual rate that

does not exceed the greater of:

(1) 18 percent a year; or

(2) the applicable alternative rate ceiling under Chapter 303.

(b) A revolving credit account may provide for interest computed under a method other than the average daily balance method if the amount of interest computed under that method does not exceed the amount of interest computed under the average daily balance method.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1348, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 887, Sec. 2, eff. Sept. 1, 2003.

Sec. 346.102. PERMISSIBLE INTEREST RATE FOR BILLING CYCLE. (a) A revolving credit account that provides for equal billing cycles may provide for interest for a billing cycle at the rate equal to one-twelfth of the applicable annual interest rate on the average daily balance of the account during that billing cycle.

(b) In any 12-month period, billing cycles are considered to be equal if:

(1) the number of billing cycles in the period does not exceed 12; and

(2) the difference between the length of the longest and the shortest billing cycles in the period does not exceed eight days.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 346.103. FEES. (a) The following fees may be charged to or collected from a customer in connection with an account under this chapter:

(1) an annual fee not to exceed:

(A) $50 a year on an account with a credit limit of $5,000 or less;

(B) $75 a year on an account with a credit limit exceeding $5,000 but not exceeding $25,000; and

(C) $125 a year on an account with a credit limit exceeding $25,000;

(2) a late charge not to exceed the lesser of $15 or five

percent of the payment due after the payment continues unpaid for 10 days or more after the date the payment is due, including Sundays and holidays;

(3) a cash advance charge not to exceed the greater of $2 or two percent of the cash advance;

(4) a returned check fee as provided for a loan agreement under Chapter 342 by Section 3.506, Business & Commerce Code; and

(5) a fee for exceeding a credit limit not to exceed the greater of $15 or five percent of the amount by which the credit limit is exceeded.

(b) A creditor may not charge, contract for, or receive interest on fees authorized under this section.

(c) A customer's monthly statement must contain the following notice printed or typed in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material: "A LATE CHARGE OF FIVE PERCENT OF THE PAYMENT DUE OR A MAXIMUM OF $15 WILL BE ASSESSED FOR A PAYMENT MADE 10 DAYS OR MORE AFTER THE DATE PAYMENT OF THIS BILL IS DUE."

(d) With respect to a revolving credit account secured by an interest in real property, a creditor may contract for, charge, and receive additional fees or charges permitted under Section 342.308 as if the revolving credit account were a secondary mortgage loan under Chapter 342.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1348, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 887, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1182 (H.B. 3453), Sec. 9, eff. September 1, 2011.

SUBCHAPTER C. CREDITOR'S DUTIES AND AUTHORITY

Sec. 346.201. INSURANCE; COLLATERAL. In connection with a revolving credit account, a creditor may require or take insurance subject to the provisions of Chapter 342, relating to insurance, as if the revolving credit account were a loan contract under that chapter. A creditor may require or take real or personal property as collateral.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended

by Acts 1999, 76th Leg., ch. 62, Sec. 7.55, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 887, Sec. 4, eff. Sept. 1, 2003.

Sec. 346.202. AMOUNTS AUTHORIZED TO BE RECOVERED FROM CUSTOMER. (a) A creditor may recover from a customer amounts incurred by the creditor for:

(1) court costs;

(2) attorney's fees assessed by a court;

(3) a fee authorized by law for filing or recording in a public office a document securing a revolving credit account, including a document releasing a security interest;

(4) a fee for recording a lien on or transferring a certificate of title to a motor vehicle securing a revolving credit account;

(5) a reasonable amount spent for repossessing, storing, preparing for sale, or selling collateral; or

(6) a premium or an identifiable charge received in connection with sale of insurance authorized for a revolving credit account.

(b) With respect to a revolving credit account secured by an interest in real property, a creditor may contract for, charge, and receive additional fees or charges permitted under Section 342.307 as if the revolving credit account were a secondary mortgage loan under Chapter 342.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 887, Sec. 5, eff. Sept. 1, 2003.

Sec. 346.203. MORE THAN ONE REVOLVING CREDIT ACCOUNT AUTHORIZED. (a) On a customer's request, a creditor may enter into more than one revolving credit account with the customer and may charge interest on each account.

(b) A creditor may not require that a customer enter into more than one revolving credit account for the purpose of collecting interest at a rate greater than the rate authorized by law.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 346.204. AMENDMENT OF REVOLVING CREDIT ACCOUNT BY CREDITOR. (a) A creditor unilaterally may amend a revolving credit account.

(b) A change made under Subsection (a) that relates to an existing or future balance of a revolving credit account and that is adverse to the customer may not take effect before the first billing cycle that begins after the 90th day after the date of written notice of the change to the customer unless the amendment is made under Section 303.103.

(c) With respect to a revolving credit account secured by an interest in real property, a creditor who makes a change under Subsection (a) that relates to an existing or future balance of the account and that is adverse to the customer must comply with the procedures in Section 303.103.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1235, Sec. 16, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 887, Sec. 6, eff. Sept. 1, 2003.

Sec. 346.205. COMPLIANCE WITH FEDERAL CONSUMER CREDIT PROTECTION ACT. This chapter does not change a creditor's obligation to comply with the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.)

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 346.206. ACCELERATION OR IMMEDIATE PAYMENT DEMAND PROHIBITED. With respect to a revolving credit account secured by an interest in real property, a creditor may not accelerate or demand immediate payment of an amount owed under the account unless the customer is in default under the terms of the account agreement.

Added by Acts 2003, 78th Leg., ch. 887, Sec. 7, eff. Sept. 1, 2003.

CHAPTER 347. MANUFACTURED HOME CREDIT TRANSACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 347.001. LEGISLATIVE FINDING. The legislature finds that credit transactions, both credit sales and consumer loans, for the

purchase of manufactured homes should be regulated equally in the same chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.002. DEFINITIONS. (a) In this chapter:

(1) "Consumer" means a person to whom credit is extended in a credit transaction. The term includes a comaker, endorser, guarantor, surety, or another person who is obligated to repay the extension of credit.

(2) "Credit document" means a written instrument evidencing a credit transaction and includes all written agreements between each consumer and creditor that relate to that transaction.

(3) "Credit transaction" means:

(A) any sale, loan, or other transaction involving a retail purchase of a manufactured home and under which a person in a written agreement, including a credit sales contract or loan instrument, grants to another person a purchase money lien on the manufactured home to secure an extension of credit that is:

(i) subject to a finance charge; or

(ii) payable in more than four installments, not including a down payment; and

(B) a lease or bailment described by Section 347.003.

(4) "Creditor" means a:

(A) person who extends credit or arranges for the extension of credit in a credit transaction; or

(B) retailer or broker, as defined by Section 1201.003, Occupations Code, who participates in arranging for the extension of credit in a credit transaction.

(5) "Manufactured home" has the meaning assigned by Section 1201.003, Occupations Code. The term includes furniture, appliances, drapes, carpets, wall coverings, and other items that are:

(A) attached to or contained in the structure; and

(B) included in the cash price and sold with the structure.

(b) To the extent possible, a word or phrase used in this chapter, other than a term defined by this section, has the meaning assigned by the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and its subsequent amendments, as implemented by Regulation Z (12

C.F.R. Part 1026).

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.773, eff. Sept. 1, 2003. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 72, eff. September 1, 2017.

Sec. 347.003. BAILMENT OR LEASE AS CREDIT TRANSACTION. (a) A bailment or lease of a manufactured home is a credit transaction if the bailee or lessee:

(1) agrees to pay as compensation for use of the manufactured home an amount that is substantially equal to or that exceeds the aggregate value of the property and services involved; and

(2) on compliance with the agreement becomes the owner of the manufactured home or has the option to become the owner of the manufactured home, for nominal or no additional consideration.

(b) A bailment or lease that the bailee or lessee may terminate at any time without penalty is not a credit transaction.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.004. COMPLIANCE WITH FEDERAL CONSUMER CREDIT PROTECTION ACT. (a) A creditor shall comply with all applicable requirements, including required disclosures, under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and its subsequent amendments, as implemented by Regulation Z (12 C.F.R. Part 1026) adopted under that Act.

(b) A regulation, disclosure, or interpretation of this chapter that is inconsistent or in conflict with a federal regulation, disclosure, or interpretation does not apply.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 73, eff. September 1, 2017.

Sec. 347.005. FEDERAL RESIDENTIAL MORTGAGE LOANS PROGRAMS. (a) A creditor and consumer may agree to any provision in the credit transaction that is expressly authorized in a program for residential mortgage loans by the United States, including the Office of Thrift Supervision, the Office of the Comptroller of the Currency, or the Department of the Treasury.

(b) If a creditor and consumer agree on an alternative residential mortgage loan from a program described by Subsection (a), the creditor shall comply with all limitations and requirements, including required disclosures, of the regulating entity that relate to the loan.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.006. WAIVER NOT VALID. No act or agreement of the consumer before or at the time of the making of a credit transaction or purchase under the transaction is a valid waiver of any provision of this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.007. APPLICATION OF CHAPTER TO COMMERCIAL LOANS. This chapter does not apply to a credit transaction that is entered into primarily for commercial or business purposes.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.18, eff. September 1, 2005.

Sec. 347.008. APPLICABILITY. Each credit transaction extended to a person who is located in this state at the time the transaction is entered into is subject to this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 30, eff. September 1, 2019.

SUBCHAPTER B. CREDIT DOCUMENT

Sec. 347.051. APPEARANCE OF CREDIT DOCUMENT; CONSUMER NOTICE.

(a) The printed part of a credit document, other than instructions for completion, must be in at least eight-point type.

(b) A credit document must contain substantially:

"NOTICE TO THE CONSUMER--DO NOT SIGN THIS DOCUMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE DOCUMENT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND OBTAIN A SUBSTANTIAL REFUND OF THE CREDIT CHARGE. KEEP THIS DOCUMENT TO PROTECT YOUR LEGAL RIGHTS."

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.052. DISCLOSURE OF AMOUNT OF DELINQUENCY CHARGE. The creditor shall disclose in the credit document the amount or method of computing the amount of a charge that is payable if a payment on the credit transaction is late.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.053. PROVISIONS PROHIBITED IN CREDIT DOCUMENT. A credit document may not:

(1) contain a power of attorney to confess judgment in this state;

(2) contain an assignment of wages;

(3) provide that the consumer agrees not to assert against a creditor or an assignee of the credit transaction a claim or defense arising out of the sale; or

(4) authorize the creditor or a person acting on the creditor's behalf to:

(A) enter the consumer's premises unlawfully; or

(B) commit a breach of the peace in the repossession of a manufactured home.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.054. CONSUMER'S ACKNOWLEDGMENT OF DELIVERY OF CREDIT DOCUMENT. (a) A consumer's acknowledgment of the delivery of a copy of the credit document is conclusive proof that:

(1) the document was delivered to the consumer; and

(2) the document did not contain a blank space that was required by this chapter to have been filled when the document was signed by the consumer.

(b) In an action or proceeding by or against a subsequent creditor who does not have knowledge to the contrary, a consumer's acknowledgment of the delivery of a copy of the credit document is conclusive proof that the creditor complied with this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.055. CREDIT DOCUMENT AFTER AMENDMENT. After a credit document is amended under Subchapter D, the document consists of:

(1) the original credit document;

(2) the writing required under Section 347.153 for that amendment; and

(3) each amendment to the original credit document adopted before that amendment.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.056. AUTHORITY OF CONSUMER CREDIT COMMISSIONER RELATING TO A CREDIT DOCUMENT. Except as provided by Section 347.004(a), the commissioner may not require the inclusion of any specific language or a disclosure on a credit document that is not expressly required by:

(1) this chapter; or

(2) a regulation of the Office of the Comptroller of the Currency.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 74, eff. September 1, 2017.

SUBCHAPTER C. FINANCE CHARGE RATES AND ADJUSTMENTS

Sec. 347.101. ADJUSTABLE RATE. A credit transaction may provide for an adjustable interest rate or time price differential in

accordance with this subchapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.102. REQUIREMENTS FOR RATE ADJUSTMENTS. (a) The interest rate or time price differential in a credit transaction may be adjusted at stated regular intervals if the credit document expressly:

(1) provides for the adjustment; and

(2) states the index described by Subsection (b) that is being used for the adjustment.

(b) The index must be:

(1) the monthly average gross yield to the Federal National Mortgage Association on accepted bids in weekly or biweekly auctions for four-month commitments to purchase FHA-insured or VA-guaranteed home mortgages, as published in the Federal Reserve Bulletin;

(2) the monthly average yield on United States Treasury securities adjusted to a constant maturity of five years as published in the Federal Reserve Bulletin; or

(3) an index expressly approved by the Office of Thrift Supervision or by the Office of the Comptroller of the Currency, Department of the Treasury, for adjustable or variable interest rates on residential mortgage loans.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.103. RATE ADJUSTMENT INDEX BASE. The index base for an adjustment of the interest rate or time price differential is set by the index value on the first day of the month in which the credit document is dated.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.104. AMOUNT OF RATE ADJUSTMENT. (a) The amount of a rate adjustment is computed by subtracting the index base or, for a change after the initial change, the index value used for the preceding rate adjustment from the index value on the first day of a month that precedes the 50th day before the date on which the

adjustment is to take effect. The amount is applied to the rate applicable to the credit transaction.

(b) The rate in a credit transaction may be adjusted only if the adjustment results in a change of at least one-eighth of one percent a year.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.105. MAXIMUM RATE ADJUSTMENTS. (a) The total of the rate adjustments for any six-month period may not exceed one-half of one percent a year.

(b) If the stated interval for rate adjustments is a 12-month period or longer, a rate adjustment may not exceed one percent a year.

(c) The total of all rate adjustments over the term of the credit transaction may not exceed the least of:

(1) one-half of the initial rate;

(2) eight percent; or

(3) a rate, expressed as a percentage, computed by dividing the term of the loan in years by two.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.106. MANDATORY DECREASE; OPTIONAL INCREASE. (a) If a computation under Section 347.104 results in a decrease, the creditor shall decrease the credit transaction's rate. If the creditor has agreed to impose periodic or aggregate limitations on rate adjustments that are smaller or more restrictive than the limitations prescribed by Section 347.105, those limitations apply to the decrease.

(b) A creditor may waive an increase that results from a computation under Section 347.104.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.107. NOTICE OF RATE ADJUSTMENT. (a) After the notice provided by this section has been given, the rate shall be increased or decreased by the amount determined by this subchapter.

(b) Before the 40th day preceding the payment date on which a rate adjustment is to take effect, the creditor shall mail to the consumer, postage prepaid, a notice that states:

(1) the initial credit transaction rate or the adjusted rate in effect on the date of the notice, as appropriate;

(2) the index base, or the index value used to compute the preceding rate adjustment, as appropriate, and the date on which the index base or value was determined;

(3) the index value used to compute the rate adjustment for which the notice is sent and the date on which the index value was determined;

(4) the amount of the rate adjustment;

(5) the new adjusted rate;

(6) the amount of the monthly payments on the indebtedness on the date of the notice;

(7) the adjusted amount of the monthly payments and the date on which the adjustment takes effect; and

(8) a statement of the prepayment rights of the consumer as set forth in the credit document.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.108. PROHIBITION ON USE OF RATE ADJUSTMENT AND CERTAIN MORTGAGES. A credit transaction that provides for a rate adjustment under this subchapter may not permit the rate adjustment to be combined with a mortgage loan that has a term of five years or less or contain a provision that otherwise additionally allows the creditor to renegotiate, modify, or otherwise adjust the rate or term of the transaction within the 60-month period after the date of the transaction.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.109. COMPUTATION OF FINANCE CHARGE FOR DISCLOSURE. (a) This section applies only for purposes of disclosure.

(b) The finance charge on a credit transaction is computed on the unpaid balance from the effective date of the transaction provided by the credit document until the payment date of the final installment, notwithstanding that the total of payments is required

to be repaid in installments.

(c) The finance charge on a credit transaction that includes an adjustable rate provision is computed on the amount financed using the initial contract rate.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.110. USE OF OPTIONAL CEILING. (a) This section applies to a credit transaction only if the federal usury preemptions for residential mortgage loans contained in the Veterans' Disability Compensation and Survivors' Benefits Act of 1979 (38 U.S.C. Section 101 et seq.), the Housing and Community Development Act of 1979 (42 U.S.C. Section 5401 et seq.), and the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. Section 1735f-7) are expressly made inapplicable to transactions made in this state by an Act of the legislature of this state. Application of this section begins on the effective date of that Act.

(b) The interest or time price differential in a credit transaction may not exceed the amount obtained by applying a simple interest rate equal to 13.32 percent a year to the unpaid balance for the scheduled term of the transaction.

(c) If the credit transaction is payable for a period that is shorter or longer than a year or is for an amount that is less or greater than $100, the amount of the maximum charge computed under this section is decreased or increased proportionately.

(d) For the purpose of a computation under this section, 15 or more days of a month may be considered a full month.

(e) A transaction payable other than in substantially equal successive monthly installments beginning one month from the date of the credit document may provide for a finance charge that does not exceed an amount that, having due regard for the schedule of payments, provides the same effective return as if the credit transaction were payable in substantially equal successive monthly installments beginning one month from the date of the credit document.

(f) As an alternative to the rate authorized under Subsection (b), a credit transaction may provide for a rate that does not exceed the applicable optional interest rate ceiling under Chapter 303.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER D. AMENDMENT OR PREPAYMENT OF CREDIT TRANSACTION

Sec. 347.151. AMENDMENT OF CREDIT TRANSACTION. (a) On a consumer's request, a creditor may:

(1) extend or defer the scheduled due date of all or part of one or more installments of the credit transaction;

(2) renew, restate, or reschedule the unpaid balance of the transaction; or

(3) increase or reduce the number of installments of the transaction.

(b) A creditor may collect a charge that does not exceed the amount computed by applying the credit transaction's interest rate or time price differential applicable on the date of adjustment to the remaining amount of the unpaid balance, computed under Section 347.155, for the period that the amount is extended or deferred.

(c) The creditor and consumer may agree to an unlimited number of extensions. The period of each extension is the period agreed to by the creditor and consumer.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.152. ALTERNATE METHOD OF AMENDMENT OF CREDIT TRANSACTION. (a) As an alternative to Section 347.151 the creditor, on the consumer's request, may agree to amend an original credit transaction by renewing, restating, or rescheduling the unpaid part of the total of payments.

(b) The charge for the amended credit transaction is computed on the unpaid balance of the transaction for the term of the transaction at the rate applicable to the transaction.

(c) For the purpose of Subsection (b), the unpaid balance of an amended credit transaction is computed by:

(1) adding:

(A) the unpaid balance of the transaction preceding the amendment;

(B) the cost of insurance incidental to the amendment;

(C) additional necessary official fees; and

(D) each accrued delinquency and collection charge; and

(2) subtracting from the total under Subdivision (1) the prepayment refund credit required by Section 347.155.

(d) The provisions of this chapter relating to minimum charges and acquisition costs do not apply to the computation of the unpaid balance for an amended credit transaction.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.153. REQUIREMENTS FOR AMENDMENT. (a) Before an amendment of a credit transaction may take effect it must be:

(1) confirmed in writing;

(2) signed by the consumer; and

(3) returned to the creditor.

(b) The writing must state:

(1) the terms of the amendment; and

(2) the new due dates and amounts of the installments.

(c) The creditor shall:

(1) deliver a copy of the writing to the consumer; or

(2) mail a copy of the writing to the consumer's address shown on the credit document.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.154. ORAL AMENDMENT NOT BINDING. An oral amendment to a credit transaction is not binding on the consumer or the creditor.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.155. PREPAYMENT. (a) A consumer may prepay in full the unpaid balance of a credit transaction at any time before maturity.

(b) On prepayment, after deduction of an acquisition charge that does not exceed $50, the consumer is entitled to a refund credit of the time price differential or interest. The amount of the credit is computed on an actuarial basis in accordance with regulations of the Office of the Comptroller of the Currency adopted under the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. Section 1735f-7a et seq.) for the prepayment of a mortgage

loan that is secured by a first lien on a residential manufactured home.

(c) In making the computation under Subsection (b), the creditor may assume that payments on the credit transaction have been made as originally scheduled, ignoring any difference created by a late or early payment.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 75, eff. September 1, 2017.

SUBCHAPTER E. INSURANCE

Sec. 347.201. PROPERTY INSURANCE. (a) A creditor may require a consumer to insure the property involved in a credit transaction with coverage designated by the creditor.

(b) Insurance required under this section may include federal flood coverage.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.202. STATEMENT OF REQUIRED INSURANCE. (a) If insurance is required in connection with a credit transaction, the creditor shall give to the consumer a statement that clearly and conspicuously states that:

(1) insurance is required in connection with the transaction; and

(2) the consumer as an option may obtain and furnish equivalent insurance coverage through an insurance policy obtained from an insurance company authorized to do business in this state subject to the limitations of Section 347.208.

(b) The statement may be made with or be a part of the credit document.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.203. CONSUMER'S FAILURE TO OBTAIN REQUIRED INSURANCE. (a) If at any time the consumer fails to obtain the required

insurance, the creditor may:

(1) treat the failure as a default; or

(2) purchase the required insurance and add to the unpaid balance of the credit transaction the premium of the insurance and interest, at the interest rate or time price differential applicable to the transaction on the date the insurance is purchased.

(b) The insurance purchased under Subsection (a) may be in an amount up to but not in excess of the prepayment amount under Section 347.155 if the balance were prepaid on the date that the insurance is purchased.

(c) If insurance is purchased under Subsection (a), the creditor shall notify the consumer that:

(1) the insurance has been purchased under this section; and

(2) the premium for the insurance and interest on the premium have been added to the unpaid balance.

(d) The creditor may determine the period and number of installments in which the consumer is to pay the premium and interest, including payment of the total amount on the date of the last installment, payment in equal increments added to each of the remaining installments, or payment in a lesser number of installments or in unequal increments.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.204. PURCHASE OF ADDITIONAL INSURANCE AFTER DATE OF CREDIT DOCUMENT. (a) A consumer may:

(1) purchase any insurance authorized by this chapter after the date of the credit document; and

(2) include the amount of the insurance premium in the unpaid balance of the credit transaction.

(b) Interest accrues on the insurance premium at a rate that does not exceed the interest rate or time price differential applicable to the credit transaction on the date the insurance is purchased.

(c) The additional insurance premium and interest may be paid in any period and any number of installments to which the consumer and creditor agree.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.205. STATEMENT FOR PURCHASE OF OPTIONAL INSURANCE. (a) A consumer who elects to purchase optional insurance must sign a statement that:

(1) indicates the consumer's election; and

(2) describes the term, premium, and type of insurance purchased.

(b) The statement may be a part of the credit document or a part of a separate document.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.206. REQUIREMENTS FOR INSURANCE CHARGE IN CREDIT TRANSACTION. Insurance required by or included in a credit transaction must be written:

(1) at lawful rates;

(2) in accordance with the Insurance Code; and

(3) by a company authorized to do business in this state.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.207. INSURANCE DISCLOSURES IN CREDIT DOCUMENT. A credit document must disclose:

(1) the term, premium, and type of insurance the cost of which is included in the unpaid balance of the credit transaction; or

(2) the term and type of insurance required in accordance with this chapter if the cost of the insurance is not included in the unpaid balance.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.208. CREDITOR MAY REFUSE TO ACCEPT POLICY. (a) If the consumer obtains insurance required under this chapter from someone other than the creditor, the creditor is entitled for good cause to refuse to accept certain insurance policies from insurance companies designated by the creditor.

(b) On the consumer's request the creditor shall deliver to the consumer a writing that states the reason for a refusal under Subsection (a).

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.209. CREDITOR'S DUTY IF INSURANCE IS CANCELED, ADJUSTED, OR TERMINATED. (a) If insurance for which a charge is included in a credit transaction is canceled, adjusted, or terminated, the creditor shall:

(1) credit to the final maturing installments of the credit transaction the amount of the refund received by the creditor for unearned insurance premiums; and

(2) if the amount to be credited under Subdivision (1) is more than the unpaid balance of the credit transaction, refund to the consumer the difference between those amounts.

(b) A cash refund is not required under this section if the amount of the refund is less than $1.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.210. SINGLE INTEREST POLICY PROHIBITED. Insurance that protects only the interest of the creditor is prohibited and may not be financed as part of a credit transaction.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.211. GAIN OR ADVANTAGE FROM INSURANCE NOT CHARGE. Any gain or advantage to a creditor or a creditor's employee, officer, director, agent, general agent, affiliate, or associate from insurance under this chapter or the provision or sale of insurance is not an additional finance charge or an additional charge in connection with a credit transaction except as specifically provided by this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER F. PAYMENT OF INSURANCE AND TAXES

Sec. 347.251. FINANCING INSURANCE. (a) A creditor may finance as part of a credit transaction insurance:

(1) required in accordance with Section 347.201; or

(2) requested by the consumer.

(b) The cost of the insurance required under Section 347.201 may be included as a separate charge in the credit transaction.

(c) The premium of any insurance included in the credit transaction may be included in the unpaid balance of the credit transaction and paid as part of the total of payments regardless of whether the term of the insurance is less than the term of the credit transaction.

(d) A consumer and creditor may agree that the purchase of additional insurance under Section 347.204 will be:

(1) in accordance with an insurance premium financing agreement made under the Insurance Code; and

(2) separate from the credit transaction.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.252. PAYMENT OF INSURANCE PREMIUMS WITH INSTALLMENTS. For insurance coverage required under Section 347.201 in the second and subsequent years of the credit transaction, a creditor may require the consumer to pay on each installment due date an amount equal to one-twelfth of the reasonably estimated yearly premium.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.253. ADJUSTMENT OF AMOUNTS PAID TO CREDITOR FOR INSURANCE. (a) If the amount held by a creditor to pay insurance premiums and the amounts for insurance to be paid to the creditor with installments before the due date of an insurance premium exceed the amount required to pay the insurance premium when it is due, the creditor, at the consumer's option, shall:

(1) repay the excess to the consumer; or

(2) credit the excess to the payment of the consumer's future insurance premium installments.

(b) If the amount held by the creditor to pay insurance premiums is not sufficient to pay an insurance premium when it is

due, the consumer, not later than the 30th day after the date on which the creditor mails to the consumer notice requesting the consumer to pay the amount of the deficiency, shall pay to the creditor an amount equal to the amount of the deficiency.

(c) If the consumer fails to pay the amount under Subsection (b) for insurance required by the creditor under Section 347.201, the creditor may treat the deficiency in the same manner as provided by Section 347.203 for the consumer's failure to obtain the required insurance.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.254. PAYMENT OF TAXES THROUGH THE CREDITOR. (a) Except as provided by Subsection (c), a creditor shall require a consumer to pay ad valorem taxes on the manufactured home through the creditor.

(b) The creditor may:

(1) include in the credit transaction an amount equal to a reasonable estimate of the tax for the first year; or

(2) require that the consumer pay on each installment due date an amount equal to one-twelfth of the reasonable estimate of the tax for the first year.

(c) The escrow requirement of Subsection (a) does not apply to a transaction involving a manufactured home if the creditor is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 338, Sec. 40, eff. June 18, 2003.

Sec. 347.255. ADJUSTMENT OF AMOUNTS PAID TO CREDITOR FOR TAXES. (a) If the amount held by a creditor to pay ad valorem taxes on the manufactured home and the amounts for taxes to be paid to the creditor with installments before the due date of the tax exceed the amount required to pay the tax when it is due, the creditor, at the consumer's option, shall:

(1) repay the excess to the consumer; or

(2) credit the excess to the payment of the consumer's future tax installments.

(b) If the amount held by the creditor to pay ad valorem taxes on the manufactured home is not sufficient to pay the tax when it is due, the consumer, before the 31st day after the date on which the creditor mails to the consumer notice requesting the consumer to pay the amount of the deficiency, shall pay to the creditor an amount equal to the amount of the deficiency.

(c) If the consumer fails to pay the amount under Subsection (b), the creditor may treat the deficiency in the same manner as provided by Section 347.203 for the consumer's failure to obtain the required insurance.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.256. CREDITOR'S ACTION ON CONSUMER'S FAILURE TO PAY TAXES. (a) If a consumer does not pay a tax that has been assessed against the manufactured home, the creditor may treat the failure as a default or may:

(1) pay to the appropriate taxing authority the unpaid tax and any interest or other charge due; and

(2) add to the unpaid balance of the credit transaction the amounts paid to the taxing authority and interest, at the interest rate or time price differential applicable to the transaction on the date payment is made.

(b) If the creditor pays a tax under this section, the creditor shall notify the consumer that:

(1) the tax and interest or other charges have been paid, as appropriate; and

(2) those amounts have been added to the unpaid balance of the credit transaction.

(c) The creditor may determine the period and number of installments in which the consumer is required to pay the amounts added to the unpaid balance, including payment of the entire amount on the date of the last installment, payment in equal increments added to each of the remaining installments, or payment in a lesser number of installments or unequal increments.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.257. AGREEMENT TO INCLUDE TAXES IN CREDIT TRANSACTION. (a) A consumer and creditor may agree to:

(1) have the creditor pay taxes, and interest or other charges, assessed by a taxing authority against a manufactured home after the date of the credit document; and

(2) include the amount paid by the creditor in the unpaid balance of the credit transaction.

(b) Interest on the amounts added to the unpaid balance under this section accrues at the interest rate or time price differential applicable to the credit transaction.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.258. DEPOSIT AMOUNTS PAID FOR TAXES OR INSURANCE. (a) This section applies to amounts received in installments by a creditor for the payment of ad valorem taxes or insurance premiums.

(b) The creditor shall deposit and hold the amount in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency.

(c) The creditor shall use the amount to pay the ad valorem taxes or insurance on the manufactured home, as appropriate.

(d) The creditor may not charge an amount for:

(1) holding or paying an amount received;

(2) analyzing the account in which the amount is deposited; or

(3) verifying or compiling the bills to be paid.

(e) The creditor is not required to pay to the consumer any interest or earnings on an amount received.

(f) The creditor shall give to the consumer, without charge, an annual accounting of the amounts received showing credits and debits and the purpose for which each debit was made.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER G. MISCELLANEOUS FEES AND CHARGES

Sec. 347.301. FEES FOR TRANSACTIONS WITHOUT REAL PROPERTY. (a) This section applies only to a credit transaction that does not involve real property.

(b) Only a fee or tax that is paid by the creditor as required

by law, including a rule, or a fee or tax paid on behalf of the consumer to a governmental entity in relation to the credit transaction may be charged to the consumer.

(c) A documentary fee for the preparation of a credit document may not be charged to the consumer.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.21(a), eff. Sept. 1, 1999.

Sec. 347.302. CHARGE PROHIBITED. A creditor may not charge a consumer any amount in connection with processing a credit transaction rate adjustment under Subchapter C.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.307. CHARGES ON REPOSSESSION. A credit document may provide for payment of:

(1) reasonable attorney's fees;

(2) court costs and disbursements; and

(3) the charge and collection of actual and reasonable out-of-pocket expenses incurred in connection with repossession of the manufactured home that secures the payment of the credit transaction or foreclosure of a lien on the manufactured home, including costs of storing, reconditioning, and reselling the manufactured home, subject to the standards of good faith and commercial reasonableness set by the Business & Commerce Code.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.308. FEE FOR TRANSFER OF OBLIGOR ON DEBT. A creditor may:

(1) agree to accept a subsequent consumer as an obligor under an existing obligation; and

(2) charge a transfer fee that does not exceed the greater of:

(A) $50; or

(B) one-half of one percent of the unpaid balance of the credit transaction computed under Section 347.155.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER H. ACTIONS ON DEFAULT

Sec. 347.351. DELINQUENCY CHARGE ON DEFAULT. (a) On each installment in default for more than 15 days, a creditor may collect a delinquency charge that does not exceed the lesser of an amount equal to five percent of the installment or $20.

(b) Only one delinquency charge may be collected on an installment, regardless of the period for which the installment remains in default.

(c) The charge or collection of a delinquency charge does not affect the right of a creditor to accelerate the debt under this subchapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.352. ACCELERATION OF DEBT MATURITY. A creditor may accelerate the maturity of all or a part of the amount owed under a credit transaction only if the consumer is in default on the performance of an obligation under the credit transaction.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.353. COMPUTING AMOUNT OWED FOR PURPOSE OF ACCELERATION. In computing the amount that is owed under a credit transaction, the creditor shall grant to the consumer a refund of the finance charge computed under Section 347.155.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.354. ACCRUAL OF INTEREST ON ACCELERATION. If payment of a debt is accelerated, interest accrues on the amount owed under the credit transaction, including expenses authorized under Section 347.307 that are incurred, at a rate equal to the rate applicable to the credit transaction at the time of the acceleration.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.355. REPOSSESSION ON DEFAULT. (a) If a consumer is in default, the creditor who possesses the first recorded perfected security interest may repossess the manufactured home.

(b) If the manufactured home is affixed to real property, the creditor, after notice, may remove the manufactured home from the real property in accordance with the applicable provisions of the Business & Commerce Code as if it were personal property.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.356. REQUIREMENTS FOR ACTION TO REPOSSESS, FORECLOSE, OR ACCELERATE PAYMENT OF ENTIRE DEBT. An action to repossess a manufactured home, foreclose a lien on a manufactured home, or accelerate payment of the entire unpaid balance of a credit transaction must comply with the regulations of the Office of the Comptroller of the Currency relating to the disclosure required for repossession, foreclosure, or acceleration except in extreme circumstances, including abandonment or voluntary surrender of the manufactured home.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 76, eff. September 1, 2017.

Sec. 347.357. DISPOSAL OF INSURANCE AND TAX ESCROW ACCOUNT ON DEFAULT. If a consumer is in default, the amount in the consumer's insurance and tax escrow accounts established under Section 347.258 shall be applied to the remaining balance of the credit transaction.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER I. SECURITY INTERESTS IN MANUFACTURED HOMES

Sec. 347.401. PRIORITY OF SECURITY INTEREST FOR UNPAID RENTAL OF REAL PROPERTY. Except as provided by this subchapter, a lien or charge against a manufactured home for unpaid rental of the real

property on which the manufactured home is or has been located is subordinate to the rights of a creditor with a security interest or lien that is:

(1) perfected under this chapter; and

(2) recorded on the document of title issued on the manufactured home.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.402. POSSESSORY LIEN. (a) The owner of the real property on which a manufactured home is or has been located and for which rental charges have not been paid has a possessory lien that is not subject to Section 347.401 to secure rental charges described by Subsection (b) if:

(1) the creditor described by Section 347.401 repossesses the manufactured home when the charges have not been paid; and

(2) the owner of the real property has mailed to the creditor by certified mail, return receipt requested, written notice of the unpaid charges.

(b) The possessory lien secures rental charges that begin to accrue:

(1) for a manufactured home that is abandoned or voluntarily surrendered by the consumer, from and after the 15th day after the date on which the creditor receives the written notice of the unpaid charges; or

(2) for a manufactured home that is not abandoned or voluntarily surrendered by the consumer, from and after the 15th day after the first day on which both:

(A) all notice and grace periods that the creditor is required to give the consumer before repossession under any applicable contract or law have expired; and

(B) the creditor has received the written notice of the unpaid charges.

(c) The maximum daily rental charge that is secured by the possessory lien is equal to one-thirtieth of the monthly rental payment last paid by the consumer.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.403. AMOUNTS THAT MAY BE RECOVERED BY REAL PROPERTY OWNER. In addition to the recovery of the rental charges, the owner of real property who is required to retain legal counsel to recover the amounts subject to the possessory lien under Section 347.402 is entitled to recover:

(1) other actual damages;

(2) attorney's fees; and

(3) court costs.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.404. LIABILITY OF REAL PROPERTY OWNER FOR REFUSAL TO ALLOW CREDITOR TO REPOSSESS MANUFACTURED HOME. (a) Unless an owner of real property has a possessory lien that has priority under Section 347.402, the owner of the real property may not refuse to allow a creditor to repossess and move the manufactured home.

(b) An owner of the real property who unlawfully refuses to allow the creditor to repossess and move the manufactured home is liable to the creditor for:

(1) an amount computed for each day that the owner of the real property maintains possession of the home equal to one-thirtieth of the monthly payment last paid by the consumer on the credit transaction;

(2) other actual or exemplary damages;

(3) attorney's fees;

(4) court costs; and

(5) any injunctive relief ordered by a court.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER J. RIGHTS AND DUTIES OF CREDITOR AND RESIDENTIAL MORTGAGE LOAN ORIGINATOR

Sec. 347.451. REGISTRATION OF CERTAIN CREDITORS. (a) A creditor who is not an authorized lender under Chapter 342 or a credit union shall:

(1) register with the Office of Consumer Credit Commissioner; and

(2) pay a fee of $15 for each location at which a credit transaction is originated, serviced, or collected.

(a-1) A registration issued under this section is valid for the period prescribed by finance commission rule adopted under Section 14.112.

(b) Subject to Section 14.112, the finance commission by rule may establish procedures to facilitate the registration and collection of fees under this section.

(b-1) A registered creditor that engages in the activity of originating a residential mortgage loan must meet the surety bond or recovery fund fee requirement, as applicable, of the creditor's residential mortgage loan originator under Section 180.058.

(c) If a creditor fails to renew the creditor's registration, the commissioner shall, not later than the 30th day after the date of expiration of the registration, notify the creditor of the expiration and of the procedures applicable to renewal.

(d) A creditor shall file the registration renewal and pay the registration fee to the commissioner not later than the 30th day after the date on which the creditor receives the notice under Subsection (c).

(e) The commissioner may refuse to renew the registration of a creditor who fails to comply with an order issued by the commissioner to enforce this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 97, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 13, eff. June 19, 2009.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 31, eff. September 1, 2019.

Sec. 347.4515. RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSE REQUIRED. (a) In this section, "Nationwide Mortgage Licensing System and Registry" and "residential mortgage loan originator" have the meanings assigned by Section 180.002.

(a-1) A license issued under this section is valid for the period prescribed by finance commission rule adopted under Section 14.112.

(b) Unless exempt under Section 180.003, or acting under the temporary authority described under Section 180.0511, an individual

who acts as a residential mortgage loan originator in the making, transacting, or negotiating of an extension of credit subject to this chapter must:

(1) be individually licensed to engage in that activity under this chapter;

(2) be enrolled with the Nationwide Mortgage Licensing System and Registry as required by Section 180.052; and

(3) comply with other applicable requirements of Chapter 180 and rules adopted under that chapter.

(c) Subject to Section 14.112, the finance commission shall adopt rules establishing procedures for issuing, renewing, and enforcing an individual license under this section. In adopting rules under this subsection, the finance commission shall ensure that:

(1) the minimum eligibility requirements for issuance of an individual license are the same as the requirements of Section 180.055;

(2) the minimum eligibility requirements for renewal of an individual license are the same as the requirements of Section 180.059; and

(3) the applicant pays:

(A) an investigation fee in a reasonable amount determined by the commissioner; and

(B) a license fee in an amount determined as provided by Section 14.107.

(d) The finance commission may adopt rules under this chapter as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

(e) The commissioner may refuse to renew the license of an individual described by Subsection (b) who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 14, eff. June 19, 2009.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 695 (S.B. 2330), Sec. 5, eff. November 24, 2019.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 32, eff. September 1, 2019.

Sec. 347.452. ACQUISITION AND TRANSFER OF CREDIT TRANSACTION OR BALANCE. (a) A person may acquire or agree to acquire from another person a credit transaction or an unpaid balance under a credit transaction on the terms and for the price to which the parties agree.

(b) Notice to the consumer of the transfer of rights or a requirement that the creditor be deprived of dominion over payments on a credit transaction or over a manufactured home that is returned to or repossessed by the creditor is not necessary for a written transfer of the credit transaction or an unpaid balance under the transaction to be valid as against a creditor, subsequent purchaser, pledgee, mortgagee, or lien claimant of the creditor.

(c) Unless the consumer has notice of the transfer of the consumer's credit transaction or an unpaid balance under the transaction, a payment made by the consumer to the creditor last known to the consumer is binding on each subsequent creditor.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.453. EFFECT OF DISCLOSURE BY ONE OF SEVERAL CREDITORS. In a credit transaction involving more than one creditor, the disclosure of an item by a creditor satisfies the requirement to disclose that item regardless of which creditor makes the disclosure.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.454. DISCLOSURE IF MORE THAN ONE CONSUMER. In a credit transaction involving more than one consumer, the creditor is required to give the disclosures required by this chapter to only one of the consumers.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.455. REAL PROPERTY IN CREDIT TRANSACTION. (a) A creditor and consumer may agree to include real property in the cash price of a credit transaction if:

(1) the real property does not exceed 200 acres;

(2) the real property is purchased by the consumer

simultaneously or in conjunction with the purchase of the manufactured home, regardless of whether the real property and manufactured home are sold by the same person; and

(3) the creditor and consumer agree that the manufactured home is to be attached to the real property within a reasonable time.

(b) If the real property is included in the cash price of a credit transaction, the creditor may:

(1) charge a fee that is ordinarily associated with a real property transaction and is not prohibited by law, including a fee that is associated with a real property transaction and excluded from a finance charge under this chapter by the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) and Regulation Z (12 C.F.R. Part 1026) adopted under that Act; and

(2) elect to treat the manufactured home as if it were residential real property for all purposes in connection with the credit transaction by conspicuously disclosing that election to the consumer.

(c) On an election under Subsection (b)(2):

(1) the credit transaction is considered to be a residential real property loan for all purposes; and

(2) this chapter, other than the definitions assigned by this chapter, does not apply to the credit transaction.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 77, eff. September 1, 2017.

SUBCHAPTER K. CREDITOR'S LIABILITY; PENALTIES

Sec. 347.501. CREDITOR'S LIABILITY RELATED TO DEPOSIT. A creditor is liable for the penalty provided by Section 349.003 if the creditor:

(1) fails to order the manufactured home or fails to hold the manufactured home in inventory in accordance with the deposit agreement under Section 347.303 or 347.304, respectively; or

(2) retains as a deposit an amount that exceeds the amount authorized by Subchapter H.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.502. LIABILITY FOR CHARGE EXCEEDING AMOUNT AUTHORIZED. (a) Notwithstanding Chapter 349, a creditor who contracts for, charges, or receives a charge relating to a credit transaction, other than interest or time price differential, that is more than that authorized by this chapter is liable to the consumer as provided by Section 349.003.

(b) For purposes of this section, a late fee, default charge, or delinquency charge is included as a charge relating to a credit transaction.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.503. CREDITOR'S LIABILITY FOR ERROR IN PAY-OFF QUOTATION. Notwithstanding Chapter 349, a creditor that responds to a consumer's request for a pay-off quotation under this chapter by delivering to the consumer a written statement indicating that the consumer owes a total amount on the credit transaction that exceeds the amount authorized by this chapter is liable to the consumer under Section 349.003.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.504. CREDITOR'S LIABILITY FOR ORAL OR UNSOLICITED WRITTEN STATEMENT OF AMOUNT OWED. On a credit transaction a creditor is not liable for an oral statement of an amount owed or for a written statement of an amount owed that is not solicited by a debtor unless the statement:

(1) is made with a demand by a creditor that the consumer pay an amount that exceeds the amount authorized by this subtitle; or

(2) is contained in a solicitation to renew or refinance existing debt.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.505. PENALTY FOR FAILURE TO REGISTER. (a) The commissioner may impose a penalty not to exceed $50 for failure to register as required by Section 347.451(a).

(b) The commissioner may impose a penalty not to exceed $250 for failure to renew an existing registration and submit the appropriate fee before the expiration of the period described by Section 347.451(d).

(c) The penalties provided by this section are the exclusive penalties for a violation of Section 347.451.

(d) The fact that a creditor was not registered as required by Section 347.451 when a contract was executed does not:

(1) render a contract invalid or unenforceable if the contract is otherwise enforceable; or

(2) subject the creditor to liability under any other law, including common law, other than the liability established by this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 347.506. WHEN ACT OR OMISSION NOT VIOLATION. (a) An act or omission does not violate this chapter if the act or omission conforms to an interpretation of any provision of this chapter that is in effect at the time of the act or omission and that:

(1) was made by the commissioner under Section 14.108; or

(2) is a final decision of an appellate court of this state or the United States.

(b) If the interpretation or decision is modified, rescinded, or invalidated by a subsequent interpretation or final decision, the subsequent interpretation or final decision does not apply to a credit transaction made before the effective date of the subsequent interpretation or final decision.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 348. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 348.001. DEFINITIONS. In this chapter:

(1) "Buyer's order" means a nonbinding, preliminary written computation relating to the purchase in a retail installment transaction of a motor vehicle that describes specifically:

(A) the motor vehicle being purchased; and

(B) each motor vehicle being traded in.

(1-a) "Commercial vehicle" has the meaning assigned by Section 353.001.

(1-b) "Debt cancellation agreement" means a retail installment contract term or a contractual arrangement modifying a retail installment contract term under which a retail seller or holder agrees to cancel all or part of an obligation of the retail buyer to repay an extension of credit from the retail seller or holder on the occurrence of the total loss or theft of the motor vehicle that is the subject of the retail installment contract but does not include an offer to pay a specified amount on the total loss or theft of the motor vehicle.

(2) "Heavy commercial vehicle" has the meaning assigned by Section 353.001.

(3) "Holder" means a person who is:

(A) a retail seller; or

(B) the assignee or transferee of a retail installment contract.

(3-a) "Motor home" means a motor vehicle that is designed to provide temporary living quarters and that:

(A) is built on a motor vehicle chassis as an integral part of or a permanent attachment to the chassis; and

(B) contains at least four of the following independent life support systems that are permanently installed and designed to be removed only for repair or replacement and that meet the standards of the American National Standards Institute, Standards for Recreational Vehicles:

(i) a cooking facility with an on-board fuel source;

(ii) a gas or electric refrigerator;

(iii) a toilet with exterior evacuation;

(iv) a heating or air-conditioning system with an on-board power or fuel source separate from the vehicle engine;

(v) a potable water supply system that includes at least a sink, a faucet, and a water tank with an exterior service supply connection; or

(vi) a 110-125 volt electric power supply.

(4) "Motor vehicle" means an automobile, motor home, truck, truck tractor, trailer, semitrailer, or bus designed and used primarily to transport persons or property on a highway. The term includes a commercial vehicle or heavy commercial vehicle. The term

does not include:

(A) a boat trailer;

(B) a vehicle propelled or drawn exclusively by muscular power;

(C) a vehicle that is designed to run only on rails or tracks; or

(D) machinery that is not designed primarily for highway transportation but may incidentally transport persons or property on a public highway.

(5) "Retail buyer" means a person who purchases or agrees to purchase a motor vehicle from a retail seller in a retail installment transaction.

(6) "Retail installment contract" means one or more instruments entered into in this state that evidence a retail installment transaction. The term includes a chattel mortgage, a conditional sale contract, a security agreement, and a document that evidences a bailment or lease described by Section 348.002. The term does not include a buyer's order.

(7) "Retail installment transaction" means a transaction in which a retail buyer purchases a motor vehicle from a retail seller other than principally for the purpose of resale and agrees with the retail seller to pay part or all of the cash price in one or more deferred installments.

(8) "Retail seller" means a person in the business of selling motor vehicles to retail buyers in retail installment transactions.

(9) "Time price differential" means the total amount added to the principal balance to determine the balance of the retail buyer's indebtedness under a retail installment contract.

(10-a) "Towable recreation vehicle" means a nonmotorized vehicle that:

(A) was originally designed and manufactured primarily to provide temporary human habitation in conjunction with recreational, camping, or seasonal use;

(B) is titled and registered with the Texas Department of Motor Vehicles as a travel trailer through a county tax assessor-collector;

(C) is permanently built on a single chassis;

(D) contains at least one life support system; and

(E) is designed to be towable by a motor vehicle.

(11) "Trade-in credit agreement" means a contractual arrangement under which a retail seller agrees to provide a specified amount as a motor vehicle trade-in credit for the diminished value of the motor vehicle that is the subject of the retail installment contract in connection with which the trade-in credit agreement is offered if the motor vehicle is damaged but not rendered a total loss as a result of a collision accident, with the credit to be applied toward the purchase or lease of a different motor vehicle from the retail seller or an affiliate of the retail seller. A trade-in credit agreement is a separate agreement from a retail installment contract and is not a term of the retail installment contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.19, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 149 (S.B. 1966), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 238 (S.B. 1965), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 676 (H.B. 2438), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3D.02, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(12), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 7, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 477 (H.B. 2339), Sec. 1, eff. September 1, 2017.

Sec. 348.0015. PRESUMPTION REGARDING NONCOMMERCIAL VEHICLES; EXCEPTION. (a) A motor vehicle that is not described by Section 353.001(1)(A), (B), or (C) or a motor vehicle that is of a type typically used for personal, family, or household use, as determined by finance commission rule, is presumed not to be a commercial vehicle.

(b) Notwithstanding Subsection (a), if a retail buyer represents in writing that a motor vehicle is not for personal,

family, or household use, or that the vehicle is for commercial use, a retail seller or holder to whom the representation is made may rely on that representation unless the retail seller or holder, as applicable, has actual knowledge that the representation is not true.

Added by Acts 2009, 81st Leg., R.S., Ch. 238 (S.B. 1965), Sec. 4, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 8, eff. September 1, 2011.

Sec. 348.002. BAILMENT OR LEASE AS RETAIL INSTALLMENT TRANSACTION. A bailment or lease of a motor vehicle is a retail installment transaction if the bailee or lessee:

(1) contracts to pay as compensation for use of the vehicle an amount that is substantially equal to or exceeds the value of the vehicle; and

(2) on full compliance with the bailment or lease is bound to become the owner or, for no or nominal additional consideration, has the option to become the owner of the vehicle.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.003. CLASSIFICATION AS RETAIL INSTALLMENT TRANSACTION UNAFFECTED. A transaction is not excluded as a retail installment transaction because:

(1) the retail seller arranges to transfer the retail buyer's obligation;

(2) the amount of any charge in the transaction is determined by reference to a chart or other information furnished by a financing institution;

(3) a form for all or part of the retail installment contract is furnished by a financing institution; or

(4) the credit standing of the retail buyer is evaluated by a financing institution.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.004. CASH PRICE. (a) The cash price is the price at which the retail seller offers in the ordinary course of business to sell for cash the goods or services that are subject to the transaction. An advertised price does not necessarily establish a cash price.

(b) The cash price does not include any finance charge.

(c) At the retail seller's option, the cash price may include:

(1) the price of accessories;

(2) the price of services related to the sale;

(3) the price of service contracts;

(4) taxes; and

(5) fees for license, title, and registration.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 676 (H.B. 2438), Sec. 4, eff. September 1, 2009.

Sec. 348.005. ITEMIZED CHARGE. An amount in a retail installment contract is an itemized charge if the amount is not included in the cash price and is the amount of:

(1) fees for registration, certificate of title, and license and any additional registration fees charged by a deputy as authorized by rules adopted under Section 520.0071, Transportation Code;

(2) any taxes;

(3) fees or charges prescribed by law and connected with the sale or inspection of the motor vehicle; and

(4) charges authorized for insurance, service contracts, warranties, automobile club memberships, trade-in credit agreements, or a debt cancellation agreement by Subchapter C.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 149 (S.B. 1966), Sec. 2, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 355 (H.B. 2462), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1287 (H.B. 2202), Sec. 2, eff. September 1, 2013.
Reenacted and amended by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 8.001, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 477 (H.B. 2339), Sec. 2, eff. September 1, 2017.

Sec. 348.006. PRINCIPAL BALANCE; INCLUSION OF DOCUMENTARY FEE. (a) The principal balance under a retail installment contract is computed by:

(1) adding:

(A) the cash price of the motor vehicle;

(B) each amount included in the retail installment contract for an itemized charge; and

(C) subject to Subsection (c), a documentary fee for services rendered for or on behalf of the retail buyer in handling and processing documents relating to the motor vehicle sale; and

(2) subtracting from the results under Subdivision (1) the amount of the retail buyer's down payment in money, goods, or both.

(b) The computation of the principal balance may include an amount authorized under Section 348.404(b).

(c) For a documentary fee to be included in the principal balance of a retail installment contract:

(1) the retail seller must charge the documentary fee to cash buyers and credit buyers;

(2) the documentary fee may not exceed a reasonable amount agreed to by the retail seller and retail buyer for the documentary services; and

(3) the buyer's order and the retail installment contract must include:

(A) a statement of the amount of the documentary fee; and

(B) in reasonable proximity to the place in each where the amount of the documentary fee is disclosed, the following notice in type that is bold-faced, capitalized, underlined, or otherwise conspicuously set out from surrounding written material:

"A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING

DOCUMENTS RELATING TO THE SALE. A DOCUMENTARY FEE MAY NOT EXCEED A REASONABLE AMOUNT AGREED TO BY THE PARTIES. THIS NOTICE IS REQUIRED BY LAW."

(d) A retail seller shall post the documentary fee notice prescribed in Subsection (c) so that it is clearly visible in each place where a vehicle sale is finalized. If the language primarily used in an oral sales presentation is not the same as the language in which the retail installment contract is written, the retail seller shall furnish to the retail buyer a written statement containing the notice set out in Subsection (c)(3)(B) in the language primarily used in the oral sales presentation.

(e) Prior to increasing the maximum amount of the documentary fee the retail seller charges, a retail seller shall provide written notice to the commissioner of the maximum amount of the documentary fee the retail seller intends to charge unless the maximum amount intended to be charged is considered reasonable as provided by Subsection (f). The commissioner may review the amount of a documentary fee a retail seller intends to charge for reasonableness if the retail seller is required to provide written notice of the fee increase under this subsection. In determining whether a fee charged by a retail seller is reasonable, the commissioner may consider the resources required by the retail seller to perform the retail seller's duties under state and federal law with respect to the handling and processing of documents relating to the sale and financing of a motor vehicle. If the commissioner determines that a documentary fee charged is not reasonable, the commissioner may require that the documentary fee charged be reduced or suspended.

(e-1) Except as provided by Subsections (e-2) and (e-3), the following information and documents are confidential and not subject to disclosure:

(1) all information provided by a retail seller to the commissioner under Subsection (e), including the maximum documentary fee a retail seller intends to charge, the written notice of an increased documentary fee, and any financial information submitted with the notice; and

(2) all correspondence between a retail seller and the commissioner or the commissioner's representative relating to the notice of an increased documentary fee under Subsection (e) and a review for reasonableness of the amount of the documentary fee to be charged.

(e-2) The commissioner may disclose information or documents that are confidential under Subsection (e-1) if:

(1) the commissioner determines that release of the information or documents is required for an administrative hearing;

(2) the retail seller consents to the release of the information or documents; or

(3) the disclosure is required by a court order.

(e-3) The commissioner or the commissioner's representative may disclose whether a retail seller has filed written notice of an increased documentary fee and the proposed amount of the increased fee to:

(1) a holder that provides written proof, signed by the retail seller, that the retail seller has agreed to assign or transfer one or more retail installment contracts to the holder; or

(2) a prospective retail buyer that provides to the commissioner:

(A) a buyer's order executed by the prospective buyer and the retail seller;

(B) a draft of a retail installment contract provided by the retail seller to the prospective buyer; or

(C) a written statement by the retail seller acknowledging that the person is a prospective buyer of a motor vehicle from the retail seller.

(f) A documentary fee charged in accordance with this section is considered reasonable for purposes of this section if the amount is less than or equal to the amount of the documentary fee presumed reasonable as established by rule of the finance commission.

(g) This section does not:

(1) create a private right of action; or

(2) require that the commissioner approve a specific documentary fee amount before a retail seller charges the fee.

(h) The finance commission may adopt rules, including rules relating to the standards for a reasonableness determination or disclosures, necessary to enforce this section. A rule adopted under this subsection may not require a retail seller to submit to the commissioner for prior approval the amount of a documentary fee that the retail seller intends to charge under this section.

(i) The commissioner has exclusive jurisdiction to enforce this section.

(j) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 117, Sec.

26(3), eff. September 1, 2011.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 800, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1327 (H.B. 3621), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 9, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 26(3), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1182 (H.B. 3453), Sec. 10, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 875 (H.B. 2949), Sec. 1, eff. September 1, 2017.

Sec. 348.007. APPLICABILITY OF CHAPTER. (a) Except as otherwise provided by this section, each retail installment transaction extended to a person who is located in this state at the time the transaction is entered into is subject to this chapter.

(a-1) A transaction in which a retail buyer purchases a towable recreation vehicle from a retail seller other than principally for the purpose of resale and agrees with the retail seller to pay part or all of the cash price in one or more deferred installments may be subject to this chapter instead of Chapter 345 at the option of the seller.

(a-2) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 117, Sec. 26(1), eff. September 1, 2011.

(a-2) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 117, Sec. 26(2), eff. September 1, 2011.

(b) This chapter does not affect or apply to a loan made or the business of making loans under other law of this state and does not affect a rule of law applicable to a retail installment sale that is not a retail installment transaction.

(c) The provisions of this chapter defining specific rates and amounts of charges and requiring certain credit disclosures to be made control over any contrary law of this state respecting those subjects.

(d) A retail installment transaction in which a retail buyer

purchases a motor vehicle that is a commercial vehicle is not subject to this chapter and is subject to Chapter 353 if the retail installment contract states that Chapter 353 applies.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.20, eff. September 1, 2005.
Acts 2009, 81st Leg., R.S., Ch. 238 (S.B. 1965), Sec. 7, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 676 (H.B. 2438), Sec. 2, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 10, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 26(1), eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 26(2), eff. September 1, 2011.
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 33, eff. September 1, 2019.

Sec. 348.008. APPLICABILITY OF OTHER STATUTES TO RETAIL INSTALLMENT TRANSACTION. (a) A loan or interest statute of this state, other than Chapter 303, does not apply to a retail installment transaction.

(b) Except as provided by this chapter, an applicable statute, including Title 1, Business & Commerce Code, or a principle of common law continues to apply to a retail installment transaction unless it is displaced by this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.009. FEDERAL DISCLOSURE REQUIREMENTS APPLICABLE. (a) The disclosure requirements of 12 C.F.R. Part 226 (Regulation Z) adopted under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and specifically 12 C.F.R. Section 226.18(f), regarding variable rate disclosures, apply according to their terms to retail installment transactions.

(b) If a disclosure requirement of this chapter and one of a

federal law, including a regulation or an interpretation of law, are inconsistent or conflict, federal law controls and the inconsistent or conflicting disclosures required by this chapter need not be given.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.0091. DISCLOSURE OF EQUITY IN TRADE-IN MOTOR VEHICLE. (a) A retail seller may not accept a trade-in motor vehicle for a motor vehicle sold under a retail installment contract unless the retail seller provides to the retail buyer, before the buyer signs the contract, a completed disclosure of trade-in equity form prescribed by this section.

(b) The finance commission shall by rule adopt a standard form for the disclosure of the equity in a retail buyer's trade-in motor vehicle.

(c) The form adopted by the finance commission under Subsection (b), at a minimum, must:

(1) contain:

(A) the name of the retail buyer;

(B) the name, address, and telephone number of the retail seller;

(C) the make, model, year, and vehicle identification number of the trade-in motor vehicle;

(D) the date of the retail installment transaction;

(E) the amount offered by the retail seller to the retail buyer for the trade-in motor vehicle;

(F) the amount the retail buyer owes on the trade-in motor vehicle as of the date of the retail installment transaction;

(G) a statement indicating whether the retail buyer's equity in the trade-in motor vehicle is positive or negative;

(H) a disclosure containing substantially similar words to the following: "If the EQUITY amount is NEGATIVE, the value the retail seller is offering you for your trade-in motor vehicle is less than what you currently owe on your trade-in. The amount of negative equity may be further reduced by the amount of any cash down payment and manufacturer's rebate and may be included in the amount financed under your retail installment contract as an itemized charge.";

(I) the cash price of the vehicle being purchased under

the retail installment transaction; and

(J) the amount financed under the retail installment contract;

(2) include a space for the signature of both the retail seller and retail buyer and the printed name of the retail seller; and

(3) be signed and dated by the retail seller and retail buyer.

(d) The retail seller is solely responsible for the content and delivery of the disclosure form required by Subsection (a). An assignee of a retail installment contract may not be held responsible for a retail seller's failure to comply with the requirements of this section.

(e) This section does not create a private right of action. The commissioner has exclusive jurisdiction to enforce this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 676 (H.B. 2438), Sec. 3, eff. September 1, 2009.

Sec. 348.010. ADDITIONAL INFORMATION ALLOWED IN CONTRACT. Information not required by this chapter may be included in a retail installment contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.011. ORDER OF ITEMS IN CONTRACT. Items required by this chapter to be in a retail installment contract are not required to be stated in the order set forth in this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.012. APPLICABILITY OF INSURANCE PREMIUM FINANCING PROVISIONS. Chapter 651, Insurance Code, does not apply to a retail installment transaction.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 17, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.117, eff.

September 1, 2005.

Sec. 348.013. CONDITIONAL DELIVERY AGREEMENT. (a) In this section, "conditional delivery agreement" means a contract between a retail seller and prospective retail buyer under the terms of which the retail seller allows the prospective retail buyer the use and benefit of a motor vehicle for a specified term.

(b) Subject to this section, a retail seller and prospective retail buyer may enter into a conditional delivery agreement.

(c) A conditional delivery agreement is:

(1) an enforceable contract; and

(2) void on the execution of a retail installment contract between the parties of the conditional delivery agreement for the sale of the motor vehicle that is the subject of the conditional delivery agreement.

(d) A conditional delivery agreement may only confer rights consistent with this section and may not confer any legal or equitable rights of ownership, including ownership of the motor vehicle that is the subject of the conditional delivery agreement.

(e) A conditional delivery agreement may not exceed a term of 15 days.

(f) If a prospective retail buyer tenders to a retail seller a trade-in motor vehicle in connection with a conditional delivery agreement:

(1) the parties must agree on the value of the trade-in motor vehicle;

(2) the conditional delivery agreement must contain the agreed value of the trade-in motor vehicle described by Subdivision (1); and

(3) the retail seller must use reasonable care to conserve the trade-in motor vehicle while the vehicle is in the retail seller's possession.

(g) If the parties to a conditional delivery agreement do not subsequently enter into a retail installment contract for the sale of the motor vehicle that is the subject of the conditional delivery agreement, the retail seller shall, not later than the seventh day after termination of the conditional delivery agreement:

(1) deliver to the prospective retail buyer any trade-in motor vehicle that the prospective retail buyer tendered in

connection with the conditional delivery agreement in the same or substantially the same condition as it was at the time of execution of the agreement and shall return any down payment or other consideration received from the prospective retail buyer in connection with the agreement; or

(2) if the trade-in motor vehicle cannot be returned in the same or substantially the same condition as it was at the time of execution of the conditional delivery agreement, deliver to the prospective retail buyer a sum of money equal to the agreed value of the trade-in motor vehicle as described by Subsection (f) and shall return any down payment or other consideration described by Subdivision (1).

(h) Any money that a retail seller is obligated to provide a prospective retail buyer under Subsection (g) must be tendered at the same time that the trade-in motor vehicle is delivered for return to the prospective retail buyer or when the trade-in motor vehicle would have been delivered if the vehicle was damaged or could not be returned.

(i) If a prospective retail buyer returns a motor vehicle under a conditional delivery agreement at the request of the retail seller, the retail seller, notwithstanding the period prescribed by Subsection (g), must return the trade-in vehicle at the same time that the motor vehicle under the conditional delivery agreement is returned by the prospective retail buyer.

(j) The prospective retail buyer shall return the motor vehicle received under the conditional delivery agreement in the same or substantially the same condition as it was at the time of the execution of the conditional delivery agreement.

(k) An amount paid or required to be paid by the retail seller under Subsection (g) is subject to review by the commissioner. If the commissioner determines that the retail seller in fact owes the prospective retail buyer a certain amount under Subsection (g), the commissioner may order the retail seller to pay the amount to the prospective retail buyer. If the trade-in motor vehicle is not returned by the retail seller in accordance with this section and the retail seller does not pay the prospective retail buyer an amount equal to the agreed value of the trade-in motor vehicle within the period prescribed by this section, the commissioner may assess an administrative penalty against the retail seller in an amount that is reasonable in relation to the value of the trade-in motor vehicle.

The commissioner shall provide notice to the retail seller and the prospective retail buyer of the commissioner's determination under this subsection.

(l) Not later than the 30th day after the date the parties receive notice of the commissioner's determination under Subsection (k), the retail seller or prospective retail buyer may file with the commissioner an appeal of the commissioner's determination requesting a time and place for a hearing before a hearings officer designated by the commissioner. A hearing under this subsection is governed by Chapter 2001, Government Code. After the hearing, based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the commissioner shall enter a final order.

(m) A person who requests an appeal under Subsection (l) is required to pay a deposit to secure the payment of the costs of the hearing in a reasonable amount as determined by the commissioner, unless the person cannot afford to pay the deposit and files an affidavit to that effect with the hearings officer in the form and content prescribed by finance commission rule. The entire deposit must be refunded to the person if the person prevails in the hearing. If the person does not prevail, any portion of the deposit in excess of the costs of the hearing assessed against the person is refundable.

(n) Notice of the commissioner's final order under Subsection (l), given to the person in accordance with Section 2001, Government Code, must include a statement of the person's right to judicial review of the order.

(o) The hearings officer may order the retail seller or the prospective retail buyer, or both, to pay reasonable expenses incurred by the commissioner in connection with obtaining a final order under Subsection (l), including attorney's fees, investigative costs, and witness fees.

(p) This section does not:

(1) apply to a bailment agreement under Section 348.002; or

(2) create a private right of action.

(q) Except as otherwise provided by this section, the commissioner has exclusive jurisdiction to enforce this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 683 (H.B. 2556), Sec. 1, eff. September 1, 2009.

Sec. 348.014. TRANSACTION CONDITIONED ON PURCHASE OF VEHICLE PROTECTION PRODUCT PROHIBITED. (a) In this section, "vehicle protection product" has the meaning assigned by Section 17.45, Business & Commerce Code.

(b) A retail seller may not require as a condition of a retail installment transaction or the cash sale of a motor vehicle that the buyer purchase a vehicle protection product that is not installed on the vehicle at the time of the transaction.

(c) A violation of this section is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 1.003, eff. September 1, 2017.

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

Sec. 348.101. RETAIL INSTALLMENT CONTRACT GENERAL REQUIREMENTS. (a) A retail installment contract is required for each retail installment transaction. A retail installment contract may be more than one document.

(b) A retail installment contract must be:

(1) in writing;

(2) dated;

(3) signed by the retail buyer and retail seller; and

(4) completed as to all essential provisions before it is signed by the retail buyer except as provided by Subsection (d).

(c) The printed part of a retail installment contract, other than instructions for completion, must be in at least eight-point type unless a different size of type is required under this subchapter.

(d) If the motor vehicle is not delivered when the retail installment contract is executed, the following information may be inserted after the contract is executed:

(1) the identifying numbers or marks of the vehicle or similar information; and

(2) the due date of the first installment.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.1015. CONTRACT CONDITIONED ON SUBSEQUENT ASSIGNMENT PROHIBITED. (a) A retail installment contract may not be conditioned on the subsequent assignment of the contract to a holder.

(b) A provision in violation of this section is void. This subsection does not affect the validity of other provisions of the contract that may be given effect without the voided provision, and to that extent those provisions are severable.

(c) This section does not create a private right of action.

(d) The commissioner has exclusive jurisdiction to enforce this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 683 (H.B. 2556), Sec. 2, eff. September 1, 2009.

Sec. 348.102. CONTENTS OF CONTRACT. (a) A retail installment contract must contain:

(1) the name of the retail seller and the name of the retail buyer;

(2) the place of business or address of the retail seller;

(3) the residence or other address of the retail buyer as specified by the retail buyer;

(4) a description of the motor vehicle being sold;

(5) the cash price of the retail installment transaction;

(6) the amount of any down payment by the retail buyer, specifying the amounts paid in money and in goods traded in; and

(7) each itemized charge.

(b) A charge for insurance, a service contract, or a warranty authorized by Subchapter C may be disclosed as provided by that subchapter.

(c) A retail installment contract that provides for a variable contract rate must set out the method by which the rate is computed.

(d) The contract must contain substantially the following notice in at least 10-point type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material:

"NOTICE TO THE BUYER--DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE

ENTITLED TO A COPY OF THE CONTRACT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. KEEP THIS CONTRACT TO PROTECT YOUR LEGAL RIGHTS."

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 238 (S.B. 1965), Sec. 8, eff. September 1, 2009.

Sec. 348.103. TIME PRICE DIFFERENTIAL FOR RETAIL INSTALLMENT CONTRACT. A retail installment contract may provide for:

(1) any amount of time price differential permitted under Section 348.104, 348.105, or 348.106; or

(2) any rate of time price differential not exceeding a yield permitted under Section 348.104, 348.105, or 348.106.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.104. TIME PRICE DIFFERENTIAL FOR CONTRACT WITH EQUAL MONTHLY SUCCESSIVE PAYMENTS. (a) A retail installment contract that is payable in substantially equal successive monthly installments beginning one month after the date of the contract may provide for a time price differential that does not exceed:

(1) the add-on charge provided by this section; or

(2) $25 if the add-on charge under Subdivision (1) is less than $25.

(b) The add-on charge is $7.50 per $100 per year on the principal balance for a new motor vehicle designated by the manufacturer by a model year that is not earlier than the year in which the sale is made.

(c) The add-on charge is $10 per $100 per year on the principal balance for:

(1) a new motor vehicle not covered by Subsection (b); or

(2) a used motor vehicle designated by the manufacturer by a model year that is not more than two years before the year in which the sale is made.

(d) The add-on charge is $12.50 per $100 per year on the

principal balance for a used motor vehicle not covered by Subsection (c) that is a motor vehicle designated by the manufacturer by a model year that is not more than four years before the year in which the sale is made.

(e) For a used motor vehicle not covered by Subsection (c) or (d), the add-on charge is:

(1) $15 per $100 per year on the principal balance; or

(2) $18 per $100 per year on the principal balance if the principal balance under the retail installment contract does not exceed $300.

(f) The time price differential is computed on the original principal balance under the retail installment contract from the date of the contract until the maturity of the final installment, notwithstanding that the balance is payable in installments.

(g) If the retail installment contract is payable for a period that is shorter or longer than a year or is for an amount that is less or greater than $100, the amount of the maximum time price differential computed under this section is decreased or increased proportionately.

(h) For the purpose of a computation under this section, 16 or more days of a month may be considered a full month.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 676 (H.B. 2438), Sec. 5, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 11, eff. September 1, 2011.

Sec. 348.105. USE OF OPTIONAL CEILING. As an alternative to the maximum rate or amount authorized for a time price differential under Section 348.104 or 348.106, a retail installment contract may provide for a rate or amount of time price differential that does not exceed the rate or amount authorized by Chapter 303.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.106. TIME PRICE DIFFERENTIAL FOR OTHER CONTRACTS. A retail installment contract that is payable other than in

substantially equal successive monthly installments or the first installment of which is not payable one month from the date of the contract may provide for a time price differential that does not exceed an amount that, having due regard for the schedule of payments, provides the same effective return as if the contract were payable in substantially equal successive monthly installments beginning one month from the date of the contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.107. CHARGE FOR DEFAULT IN PAYMENT OF INSTALLMENT. (a) A retail installment contract may provide that if an installment remains unpaid after the 15th day after the maturity of the installment the holder may collect:

(1) a delinquency charge that does not exceed five percent of the amount of the installment; or

(2) interest on the amount of the installment accruing after the maturity of the installment and until the installment is paid in full at a rate that does not exceed the maximum rate authorized for the contract.

(b) A retail installment contract that provides for the accrual earnings method may provide for the delinquency charge authorized by Subsection (a)(1), the interest authorized by Subsection (a)(2), or both.

(c) Only one delinquency charge may be collected on an installment under this section regardless of the duration of the default.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1077, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 12, eff. September 1, 2011.

Sec. 348.108. CHARGES FOR COLLECTING DEBT. A retail installment contract may provide for the payment of:

(1) reasonable attorney's fees if the contract is referred for collection to an attorney who is not a salaried employee of the holder;

(2) court costs and disbursements; and

(3) reasonable out-of-pocket expenses incurred in connection with the repossession or sequestration of the motor vehicle securing the payment of the contract or foreclosure of a security interest in the vehicle, including the costs of storing, reconditioning, and reselling the vehicle, subject to the standards of good faith and commercial reasonableness set by Title 1, Business & Commerce Code.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.109. ACCELERATION OF DEBT MATURITY. A retail installment contract may not authorize the holder to accelerate the maturity of all or a part of the amount owed under the contract unless:

(1) the retail buyer is in default in the performance of any of the buyer's obligations; or

(2) the holder believes in good faith that the prospect of buyer's payment or performance is impaired.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 238 (S.B. 1965), Sec. 9, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 13, eff. September 1, 2011.

Sec. 348.110. DELIVERY OF COPY OF CONTRACT. A retail seller shall:

(1) deliver to the retail buyer a copy of the retail installment contract as accepted by the retail seller; or

(2) mail to the retail buyer at the address shown on the retail installment contract a copy of the retail installment contract as accepted by the retail seller.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.111. BUYER'S RIGHT TO RESCIND CONTRACT. Until the

retail seller complies with Section 348.110, a retail buyer who has not received delivery of the motor vehicle is entitled to:

(1) rescind the contract;

(2) receive a refund of all payments made under or in contemplation of the contract; and

(3) receive the return of all goods traded in to the retail seller under or in contemplation of the contract or, if those goods cannot be returned, to receive the value of those goods.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.112. BUYER'S ACKNOWLEDGMENT OF DELIVERY OF CONTRACT COPY. (a) Any retail buyer's acknowledgment of delivery of a copy of the retail installment contract must:

(1) be in at least 10-point type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material; and

(2) appear directly above the buyer's signature.

(b) Any retail buyer's acknowledgment conforming to this section of delivery of a copy of the retail installment contract is, in an action or proceeding by or against a holder of the contract who was without knowledge to the contrary when the holder purchased it, conclusive proof:

(1) that the copy was delivered to the buyer;

(2) that the contract did not contain a blank space that was required to have been completed under this chapter when the contract was signed by the buyer; and

(3) of compliance with Sections 348.009, 348.101, 348.102, 348.123, 348.205, 348.405, 348.406, and 348.408.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.113. AMENDMENT OF RETAIL INSTALLMENT CONTRACT. On request by a retail buyer, the holder may agree to one or more amendments to the retail installment contract to:

(1) extend or defer the scheduled due date of all or a part of one or more installments; or

(2) renew, restate, or reschedule the unpaid balance under the contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.114. CHARGES FOR DEFERRING INSTALLMENT. (a) If a retail installment contract that provides for a time price differential that is computed using the add-on method or the scheduled installment earnings method is amended to defer all or a part of one or more installments for not longer than three months, the holder may collect from the retail buyer:

(1) a deferment charge in an amount computed on the amount deferred for the period of deferment at a rate that does not exceed the effective return for time price differential permitted for a monthly payment retail installment contract; and

(2) the amount of the additional cost to the holder for:

(A) premiums for continuing in force any insurance coverages provided for by the contract; and

(B) any additional necessary official fees.

(b) The minimum charge under Subsection (a)(1) is $1.

(c) If a retail installment contract that provides for a time price differential that is computed using the true daily earnings method is amended to defer all or a part of one or more installments, the holder may charge and receive from the retail buyer time price differential on the unpaid balance of the contract at the rate agreed to in the contract. At the time of deferment, the holder must provide the following written notice to the retail buyer that is boldfaced, capitalized, or underlined or otherwise conspicuously set out from any surrounding written material: "FINANCE CHARGES WILL CONTINUE TO ACCRUE ON THE UNPAID BALANCE AT THE CONTRACT RATE. BY DEFERRING ONE OR MORE INSTALLMENTS, YOU WILL PAY MORE FINANCE CHARGES THAN ORIGINALLY DISCLOSED." A holder does not collect a deferment charge by the accrual of time price differential on the unpaid balance of the contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 3, eff. September 1, 2017.

Sec. 348.115. CHARGE FOR OTHER AMENDMENT. (a) If the unpaid

balance of a retail installment contract is extended, renewed, restated, or rescheduled under this subchapter and Section 348.114 does not apply, the holder may collect an amount computed on the principal balance of the amended contract for the term of the amended contract at the time price differential for a retail installment contract that is applicable after reclassifying the motor vehicle by its model year at the time of the amendment.

(b) The principal balance of the amended contract is computed by:

(1) adding:

(A) the unpaid balance as of the date of amendment;

(B) the cost of any insurance incidental to the amendment;

(C) the amount of each additional necessary official fee; and

(D) the amount of each accrued delinquency or collection charge; and

(2) subtracting from the total computed under Subdivision (1) an amount equal to the prepayment refund credit required by Section 348.120 or 348.121, as applicable.

(c) The provisions of this chapter relating to minimum charges under Section 348.104 and acquisition costs under the refund schedule under Section 348.120 do not apply in computing the principal balance of the amended contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.116. CONFIRMATION OF AMENDMENT. An amendment to a retail installment contract must be confirmed in a writing signed by the retail buyer. The holder shall:

(1) deliver a copy of the confirmation to the buyer; or

(2) mail a copy of the confirmation to the buyer at the buyer's most recent address shown on the records of the holder.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.117. CONTRACT AFTER AMENDMENT. After amendment the retail installment contract is the original contract and each amendment to the original contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.118. PREPAYMENT OF CONTRACT. A retail buyer may prepay a retail installment contract in full at any time before maturity. This section prevails over a conflicting provision of the contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.119. REFUND CREDIT ON PREPAYMENT. If a retail buyer prepays a retail installment contract in full or if the holder of the contract demands payment of the unpaid balance of the contract in full before the contract's final installment is due, the buyer is entitled to receive a refund credit as provided by Section 348.120 or 348.121, as applicable.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.120. AMOUNT OF REFUND CREDIT FOR MONTHLY INSTALLMENT CONTRACT. (a) This section applies only to a refund credit on the prepayment of a retail installment contract that is payable in substantially equal successive monthly installments beginning one month after the date of the contract.

(b) On a contract for a motor vehicle the minimum amount of the refund credit is computed by:

(1) subtracting an acquisition cost of $25 from the original time price differential; and

(2) multiplying the amount computed under Subdivision (1) by the percentage of refund computed under Subsection (d).

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 117, Sec. 26(3), eff. September 1, 2011.

(d) The percentage of refund is computed by:

(1) computing the sum of all of the monthly balances under the contract's schedule of payments; and

(2) dividing the amount computed under Subdivision (1) into the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(A) on the first day, after the date of the prepayment

or demand for payment in full, that is the date of a month that corresponds to the date of the month that the first installment is due under the contract; or

(B) if the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the next monthly anniversary date of the contract occurring after the prepayment or demand.

(e) A refund credit is not required if the amount of the refund credit is less than $1.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 14, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 26(3), eff. September 1, 2011.

Sec. 348.121. AMOUNT OF REFUND CREDIT FOR OTHER CONTRACTS. The minimum amount of the refund credit on a retail installment contract to which Section 348.120 does not apply shall be computed in a manner proportionate to the method set out by that section for the type of motor vehicle being sold, having due regard for:

(1) the amount of each installment;

(2) the irregularity of the installment periods; and

(3) the requirements of Sections 348.104(f) and 348.106.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.122. REINSTATEMENT OF CONTRACT AFTER DEMAND FOR PAYMENT. After a demand for payment in full under a retail installment contract, the retail buyer and holder of the contract may:

(1) agree to reinstate the contract; and

(2) amend the contract as provided by Section 348.113.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.123. REFINANCING OF LARGE INSTALLMENT. (a) If a

scheduled installment of a retail installment contract is more than an amount equal to twice the average of all installments scheduled before that installment, other than the down payment, the retail buyer is entitled to refinance that installment:

(1) when the installment is due;

(2) without an acquisition cost;

(3) in installments that are not greater or more frequent than the average amount and frequency of installments preceding that installment; and

(4) at a rate of time price differential that does not exceed the rate applicable to the original contract.

(b) This section does not apply to:

(1) a lease;

(2) a retail installment transaction for a vehicle that is to be used primarily for a purpose other than personal, family, or household use;

(3) a transaction for which the payment schedule is adjusted to the seasonal or irregular income or scheduled payments or obligations of the buyer;

(4) a transaction of a type that the commissioner determines does not require the protection for the buyer provided by this section; or

(5) a retail installment transaction in which:

(A) the seller is a franchised dealer licensed under Chapter 2301, Occupations Code; and

(B) the buyer is entitled, at the end of the term of the retail installment contract, to choose one of the following:

(i) sell the vehicle back to the holder according to a written agreement:

(a) entered into between the buyer and holder concurrently with or as a part of the transaction; and

(b) under which the buyer will be released from liability or obligation for the final scheduled payment under the contract on compliance with the agreement;

(ii) pay the final scheduled payment under the contract; or

(iii) if the buyer is not in default under the contract, refinance the final scheduled payment with the holder for repayment in not fewer than 24 equal monthly installments or on other terms agreed to by the buyer and holder at the time of refinancing

and at a rate of time price differential not to exceed the lesser of:

(a) a rate equal to the maximum rate authorized under this subchapter; or

(b) an annual percentage rate of five percent a year more than the annual percentage rate of the original contract.

(c) A retail installment contract under Subsection (b)(5) must disclose that any refinancing may be for any period and payment schedule to which the buyer and holder agree.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.22(a), eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.774, eff. Sept. 1, 2003.

Sec. 348.124. DEBT CANCELLATION AGREEMENTS. (a) In connection with a retail installment transaction under this chapter, a retail seller may offer to the retail buyer a debt cancellation agreement, including a guaranteed asset protection waiver or similarly named agreement. If the retail installment transaction requires insurance coverage as part of the retail buyer's responsibility to the holder, the debt cancellation agreement, guaranteed asset protection waiver, or similarly named agreement must be offered under Chapter 354. The retail seller may not require that the purchase of a debt cancellation agreement by the retail buyer be made in order to enter into a retail installment transaction.

(b) A debt cancellation agreement is not considered an insurance product.

(c) The amount charged for a debt cancellation agreement made in connection with a retail installment contract must be reasonable.

(d) In addition to other disclosures required by state or federal law, the retail seller shall provide to the retail buyer a separate notice in connection with the retail installment contract stating that the retail buyer is not required to accept or provide a debt cancellation agreement in order to purchase the motor vehicle under a retail installment contract.

Added by Acts 2009, 81st Leg., R.S., Ch. 149 (S.B. 1966), Sec. 3, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1034 (H.B. 2931), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 4, eff. September 1, 2017.

Sec. 348.125. TRADE-IN CREDIT AGREEMENTS OFFERED IN CONNECTION WITH RETAIL INSTALLMENT CONTRACTS. (a) A retail seller may, at the time a retail installment contract is executed, offer to sell to a retail buyer a trade-in credit agreement or similarly named agreement.

(b) A trade-in credit agreement is not considered an insurance product.

(c) To ensure the faithful performance of a retail seller's obligations to a retail buyer under a trade-in credit agreement, the retail seller must be insured under a contractual liability reimbursement policy approved by the commissioner of insurance and issued for the benefit of Texas residents.

(d) In addition to other disclosures required by state or federal law, if a retail seller offers to a retail buyer a trade-in credit agreement, the retail seller shall give the retail buyer at the time the retail installment contract is executed a copy of the written trade-in credit agreement and written notice that the retail buyer:

(1) is not required to purchase the trade-in credit agreement as a condition for approval of the retail installment contract;

(2) is entitled to cancel the trade-in credit agreement before the 31st day after the date the retail installment contract is executed and receive a full refund;

(3) may terminate the trade-in credit agreement at any time on or after the 31st day after the date the retail installment contract is executed and receive a pro rata refund minus any applicable cancellation fee which may not exceed $50; and

(4) has been provided a clear and concise disclosure of the amount of the credit available during the term of the trade-in credit agreement.

(e) The amount charged for a trade-in credit agreement offered in connection with a retail installment contract may not exceed five percent of the cash price of the motor vehicle that is the subject of the retail installment contract, including any attached accessories and excluding the price of services related to the sale, the price of

service contracts, taxes, and fees for license, title, and registration.

(f) A trade-in credit agreement must require the retail buyer to provide proof of insurance settlement documents in order to obtain the credit. A trade-in credit agreement may not require the retail buyer to provide any other documentation in order to obtain the credit.

(g) If a retail seller enters a trade-in credit agreement with a retail buyer, the retail seller must comply with the terms of the trade-in credit agreement in connection with the purchase or lease of a subsequent motor vehicle. A retail seller must provide any credit required under a trade-in credit agreement at the time of the purchase or lease of a subsequent motor vehicle.

(h) The benefit to be provided in connection with a trade-in credit agreement must bear a reasonable relationship to the amount charged for the trade-in credit agreement and the amount, term, and conditions of the retail installment contract.

Added by Acts 2017, 85th Leg., R.S., Ch. 477 (H.B. 2339), Sec. 3, eff. September 1, 2017.

SUBCHAPTER C. INSURANCE

Sec. 348.201. PROPERTY INSURANCE. (a) A holder may request or require a retail buyer to insure the motor vehicle purchased under a retail installment transaction and accessories and related goods subject to the holder's security interest.

(b) The insurance and the premiums or charges for the insurance must bear a reasonable relationship to:

(1) the amount, term, and conditions of the retail installment contract; and

(2) the existing hazards or risk of loss, damage, or destruction.

(c) The insurance may not:

(1) cover unusual or exceptional risks; or

(2) provide coverage not ordinarily included in policies issued to the public.

(d) The holder may include the cost of insurance provided under this section as a separate charge in the contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.202. CREDIT LIFE AND CREDIT HEALTH AND ACCIDENT INSURANCE. (a) As additional protection for the contract, a holder may request or require a retail buyer to provide credit life insurance and credit health and accident insurance.

(b) As additional protection for the contract, a seller may offer involuntary unemployment insurance to the buyer at the time the contract is executed.

(c) A holder may include the cost of insurance provided under Subsection (a) or (b), and a policy or agent fee charged in connection with insurance provided under Subsection (a) or (b), as a separate charge in the contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1107, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 409, Sec. 1, eff. Sept. 1, 2001.

Sec. 348.203. MAXIMUM AMOUNT OF CREDIT LIFE AND CREDIT HEALTH AND ACCIDENT COVERAGE. (a) At any time the total amount of the policies of credit life insurance in force on one retail buyer on one retail installment contract may not exceed:

(1) the total amount repayable under the contract; and

(2) the greater of the scheduled or actual amount of unpaid indebtedness if the indebtedness is repayable in substantially equal installments.

(b) At any time the total amount of the policies of credit health and accident insurance in force on one retail buyer on one retail installment contract may not exceed the total amount payable under the contract, and the amount of each periodic indemnity payment may not exceed the scheduled periodic payment on the indebtedness.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.204. INSURANCE STATEMENT. (a) If insurance is required in connection with a retail installment contract, the holder shall give to the retail buyer a written statement that clearly and conspicuously states that:

(1) insurance is required in connection with the contract;

and

(2) the buyer as an option may furnish the required insurance through:

(A) an existing policy of insurance owned or controlled by the buyer; or

(B) an insurance policy obtained through an insurance company authorized to do business in this state.

(b) If requested or required insurance is sold or obtained by the holder and the retail installment contract includes a premium or rate of charge for the insurance that is not fixed or approved by the commissioner of insurance, the holder shall deliver or mail to the retail buyer a written statement that includes that fact.

(c) A statement under Subsection (a) or (b) may be provided with or as part of the retail installment contract or separately.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.205. STATEMENT IF LIABILITY INSURANCE NOT INCLUDED IN CONTRACT. If liability insurance coverage for bodily injury and property damage caused to others is not included in a retail installment contract, the retail installment contract or a separate writing must contain, in at least 10-point type that is bold-faced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.206. INSURANCE MAY BE FURNISHED BY BUYER. (a) If insurance is requested or required in connection with a retail installment contract and the retail installment contract includes a premium or rate of charge that is not fixed or approved by the commissioner of insurance, the retail buyer is entitled to furnish the insurance coverage not later than the 10th day after the date of the contract or the delivery or mailing of the written statement required under Section 348.204, as appropriate, through:

(1) an existing insurance policy owned or controlled by the buyer; or

(2) an insurance policy obtained from an insurance company authorized to do business in this state.

(b) When a retail installment contract is executed, the retail buyer is entitled to purchase the insurance described by Section 348.210 and select:

(1) the agent or broker; and

(2) an insurance company acceptable to the holder.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.207. BUYER'S FAILURE TO PROVIDE EVIDENCE OF INSURANCE. (a) If a retail buyer fails to present to the holder reasonable evidence that the buyer has obtained or maintained a coverage required by the retail installment contract, the holder may:

(1) obtain substitute insurance coverage that is substantially equal to or more limited than the coverage required; and

(2) add the amount of the premium advanced for the substitute insurance to the unpaid balance of the contract.

(b) Substitute insurance coverage under Subsection (a)(1):

(1) may at the holder's option be limited to coverage only of the interest of the holder or the interest of the holder and the buyer; and

(2) must be written at lawful rates in accordance with the Insurance Code by a company authorized to do business in this state.

(c) If substitute insurance is obtained by the holder under Subsection (a), the amendment adding the premium or rescheduling the contract is not required to be signed by the retail buyer. The holder shall deliver to the buyer or send to the buyer's most recent address shown on the records of the holder specific written notice that the holder has obtained substitute insurance.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.208. CHARGES FOR OTHER INSURANCE AND FORMS OF PROTECTION INCLUDED IN RETAIL INSTALLMENT CONTRACT. (a) A retail buyer and retail seller may agree in a retail installment contract to include a charge for insurance coverage that is:

(1) for a risk of loss or liability reasonably related to:

(A) the motor vehicle;
(B) the use of the motor vehicle; or
(C) goods or services that:
(i) are related to the motor vehicle; and
(ii) may ordinarily be insured with a motor vehicle;
(2) written on policies or endorsement forms prescribed or approved by the commissioner of insurance; and
(3) ordinarily available in policies or endorsements offered to the public.

(b) A retail installment contract may include as a separate charge an amount for:
(1) motor vehicle property damage or bodily injury liability insurance;
(2) mechanical breakdown insurance;
(3) participation in a motor vehicle theft protection plan;
(4) insurance to reimburse the retail buyer for the amount computed by subtracting the proceeds of the buyer's basic collision policy on the motor vehicle from the amount owed on the vehicle if the vehicle has been rendered a total loss;
(5) a warranty or service contract relating to the motor vehicle;
(6) an identity recovery service contract;
(7) a debt cancellation agreement, including a debt cancellation agreement under Chapter 354, if the agreement is included as a term of a retail installment contract under Section 348.124; or
(8) a trade-in credit agreement.

(b-1) In this section, "identity recovery service contract" means an agreement:
(1) to provide identity recovery, as defined by Section 1304.003, Occupations Code;
(2) that is entered into for a separately stated consideration and for a specified term; and
(3) that is financed through a retail installment contract.

(c) Notwithstanding any other law, service contracts, debt cancellation agreements, and trade-in credit agreements sold by a retail seller of a motor vehicle to a retail buyer are not subject to Chapter 101 or 226, Insurance Code.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 117, Sec.

26(3), eff. September 1, 2011.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 117, Sec. 26(3), eff. September 1, 2011.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 117, Sec. 26(3), eff. September 1, 2011.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1107, Sec. 2, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1559, Sec. 2, eff. Aug. 30, 1999; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.512, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.118, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 36 (S.B. 778), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 149 (S.B. 1966), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 238 (S.B. 1965), Sec. 10, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 10.002, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 26(3), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1207 (S.B. 1388), Sec. 1, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 5, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 477 (H.B. 2339), Sec. 4, eff. September 1, 2017.

Sec. 348.209. REQUIREMENTS FOR INCLUDING INSURANCE COST IN CONTRACT. (a) If insurance is included as an itemized charge in a retail installment contract:

(1) the insurance must be written:

(A) at lawful rates;

(B) in accordance with the Insurance Code; and

(C) by a company authorized to do business in this state; and

(2) the disclosure requirements of this section must be

satisfied.

(b) If the insurance is described by Section 348.201, 348.202, or 348.208(a), the retail installment contract must identify the:

(1) type of the coverage;

(2) term of the coverage; and

(3) amount of the premium for the coverage.

(c) If the insurance is described by Section 348.208(a), the retail installment contract must also clearly indicate that the coverage is optional.

(d) If the retail installment contract includes a charge described by Section 348.208(b), the retail installment contract must clearly and conspicuously disclose that the charge is included.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.210. DELIVERY OF INSURANCE DOCUMENT TO BUYER. A holder who purchases dual interest insurance on the motor vehicle shall within a reasonable time after execution of the retail installment contract send or cause to be sent to the retail buyer a policy or certificate of insurance written by an insurance company authorized to do business in this state that clearly sets forth:

(1) the amount of the premium;

(2) the kind of insurance provided;

(3) the coverage of the insurance; and

(4) all terms, including options, limitations, restrictions, and conditions, of the policy.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.211. HOLDER'S DUTY IF INSURANCE IS ADJUSTED OR TERMINATED. (a) If insurance for which a charge is included in or added to a retail installment contract is canceled, adjusted, or terminated, the holder shall, at the holder's option:

(1) apply the amount of the refund for unearned insurance premiums received by the holder to replace required insurance coverage; or

(2) credit the refund to the final maturing installments of the retail installment contract.

(b) If the amount to be applied or credited under Subsection

(a) is more than the amount unpaid on the retail installment contract, the holder shall refund to the retail buyer the difference between those amounts.

(c) A cash refund is not required under this section if the amount of the refund is less than $1.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.212. GAIN OR ADVANTAGE FROM INSURANCE NOT ADDITIONAL CHARGE. Any gain or advantage to the holder or the holder's employee, officer, director, agent, general agent, affiliate, or associate from insurance or the provision or sale of insurance under this subchapter is not an additional charge or additional time price differential in connection with a retail installment contract except as specifically provided by this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.213. ADDING TO RETAIL INSTALLMENT CONTRACT PREMIUMS FOR INSURANCE ACQUIRED AFTER TRANSACTION. (a) A retail buyer and holder may agree to add to the unpaid balance of a retail installment contract premiums for insurance policies obtained after the date of the retail installment transaction covering the motor vehicle, the use of the motor vehicle, or goods or services related to the motor vehicle, including premiums for the renewal of a policy included in the contract.

(b) A policy of insurance described by Subsection (a) must comply with the applicable requirements of Sections 348.201, 348.203, 348.208, and 348.209.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 238 (S.B. 1965), Sec. 11, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 15, eff. September 1, 2011.

Sec. 348.214. EFFECT OF ADDING PREMIUM TO CONTRACT. If a

premium is added to the unpaid balance of a retail installment contract under Section 348.207 or 348.213, the rate applicable to the time price differential agreed to in the retail installment contract remains in effect and shall be applied to the new unpaid balance, or the contract may be rescheduled in accordance with Sections 348.113-348.117 without reclassifying the motor vehicle by its year model at the time of the amendment.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.215. FINANCING ENTITY MAY NOT REQUIRE INSURANCE FROM PARTICULAR SOURCE. If a retail installment contract presented to a financing entity for acceptance includes any insurance coverage, the financing entity may not directly or indirectly require, as a condition of its agreement to finance the motor vehicle, that the retail buyer purchase the insurance coverage from a particular source.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER D. ACQUISITION OF CONTRACT OR BALANCE

Sec. 348.301. AUTHORITY TO ACQUIRE. A person may acquire a retail installment contract or an outstanding balance under a contract from another person on the terms, including the price, to which they agree. Notwithstanding any other applicable law of this state, no person acquiring or assigning a retail installment contract, or any balance under a contract, has any duty to disclose to any other person the terms on which a contract or balance under a contract is acquired, including any discount or difference between the rates, charges, or balance under the contract and the rates, charges, or balance acquired.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 909, Sec. 2.20, eff. June 18, 1999.

Sec. 348.302. LACK OF NOTICE DOES NOT AFFECT VALIDITY AS TO CERTAIN CREDITORS. Notice to a retail buyer of an assignment or negotiation of a retail installment contract or an outstanding

balance under the contract or a requirement that the retail seller be deprived of dominion over payments on a retail installment contract or over the motor vehicle if returned to or repossessed by the retail seller is not necessary for a written assignment or negotiation of the contract or balance to be valid as against a creditor, subsequent purchaser, pledgee, mortgagee, or lien claimant of the retail seller.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.303. PAYMENT BY BUYER. Unless a retail buyer has notice of the assignment or negotiation of the buyer's retail installment contract or an outstanding balance under the contract, a payment by the buyer to the most recent holder known to the buyer is binding on all subsequent holders.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER E. HOLDER'S RIGHTS, DUTIES, AND LIMITATIONS

Sec. 348.403. SELLER'S PROMISE TO PAY OR TENDER OF CASH TO BUYER AS PART OF TRANSACTION. A retail seller may not promise to pay, pay, or otherwise tender cash to a retail buyer as a part of a transaction under this chapter unless specifically authorized by this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.404. SELLER'S ACTION FOR INCENTIVE PROGRAM OR TO PAY FOR BUYER'S MOTOR VEHICLE. (a) A retail seller may pay, promise to pay, or tender cash or another thing of value to the manufacturer, distributor, or retail buyer of the product if the payment, promise, or tender is made in order to participate in a financial incentive program offered by the manufacturer or distributor of the vehicle to the buyer.

(b) A retail seller, in connection with a retail installment transaction, may:

(1) advance money to retire:

(A) an amount owed against a motor vehicle used as a trade-in or a motor vehicle owned by the buyer that has been declared

a total loss by the buyer's insurer; or

(B) the retail buyer's outstanding obligation under a motor vehicle lease contract, a credit transaction for the purchase of a motor vehicle, or another retail installment transaction; and

(2) finance repayment of that money in a retail installment contract.

(c) A retail seller may pay in cash to the retail buyer any portion of the net cash value of a motor vehicle owned by the buyer and used as a trade-in in a transaction involving the sale of another motor vehicle. In this subsection, "net cash value" means the cash value of a motor vehicle after payment of all amounts secured by the motor vehicle.

(d) A retail seller may include money advanced under Subsection (b) in the retail installment contract only if it is included as an itemized charge and may disclose money advanced under Subsection (b) in any manner permitted by 12 C.F.R. Part 226 (Regulation Z) adopted under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.). Section 349.003 does not apply to this subsection. This subsection does not create a private right of action. The commissioner has exclusive jurisdiction to enforce this subsection.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1042, Sec. 1, eff. Aug. 30, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 676 (H.B. 2438), Sec. 6, eff. September 1, 2009.

Sec. 348.405. STATEMENT OF PAYMENTS AND AMOUNT DUE UNDER CONTRACT. (a) On written request of a retail buyer, the holder of a retail installment contract shall give or send to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under the contract.

(b) A retail buyer is entitled to one statement during a six-month period without charge. The charge for each additional requested statement may not exceed $1.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.406. RECEIPT FOR CASH PAYMENT. A holder of a retail

installment contract shall give the retail buyer a written receipt for each cash payment.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.407. RETENTION OR DISPOSITION OF NONATTACHED PERSONAL PROPERTY. (a) If a retail installment contract authorizes the holder or a person acting on the holder's behalf to retain or dispose of tangible personal property acquired in the repossession of a motor vehicle that is not attached to the vehicle and not subject to a security interest, the contract or another writing must require the holder to send written notice of the acquisition of the property to the retail buyer in accordance with this section.

(b) The notice must be mailed or delivered to the most recent address of the retail buyer shown on the records of the holder not later than the 15th day after the date on which the holder discovers the property.

(c) The notice must:

(1) state that the retail buyer may identify and claim the property at a reasonable time before the 31st day after the date on which the notice was mailed or delivered; and

(2) give the location at which and reasonable times during the period that the retail buyer may identify and claim the property.

(d) If the property is not claimed before the date described by Subsection (c)(1), the holder may:

(1) retain the property subject to any legal rights of the retail buyer; or

(2) dispose of the property in a reasonable manner and distribute any proceeds of the disposition according to applicable law.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.408. OUTSTANDING BALANCE INFORMATION; PAYMENT IN FULL. (a) The holder of a retail installment contract who gives the retail buyer or the buyer's designee outstanding balance information relating to the contract is bound by that information and shall honor that information for a reasonable time.

(b) If the retail buyer or the buyer's designee tenders to the

holder as payment in full an amount derived from that outstanding balance information, the holder shall:

(1) accept the amount as payment in full; and

(2) release the holder's lien against the motor vehicle within a reasonable time not later than the 10th day after the date on which the amount is tendered.

(c) A retail seller must pay in full the outstanding balance of a vehicle traded in not later than the 25th day after the date that:

(1) the retail installment contract is signed by the retail buyer and the retail buyer receives delivery of the motor vehicle; and

(2) the retail seller receives delivery of the motor vehicle traded in and the necessary and appropriate documents to transfer title from the buyer.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 676 (H.B. 2438), Sec. 7, eff. September 1, 2009.

Sec. 348.409. LIABILITY RELATING TO OUTSTANDING BALANCE INFORMATION. A holder who violates Section 348.408 is liable to the retail buyer or the buyer's designee in an amount computed by adding:

(1) three times the difference between the amount tendered and the amount sought by the holder at the time of tender;

(2) interest;

(3) reasonable attorney's fees; and

(4) costs.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.410. PROHIBITION ON POWER OF ATTORNEY TO CONFESS JUDGMENT OR ASSIGNMENT OF WAGES. A retail installment contract may not contain:

(1) a power of attorney to confess judgment in this state; or

(2) an assignment of wages.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.411. PROHIBITION ON CERTAIN ACTS OF REPOSSESSION. A retail installment contract may not:

(1) authorize the holder or a person acting on the holder's behalf to:

(A) enter the retail buyer's premises in violation of Chapter 9, Business & Commerce Code; or

(B) commit a breach of the peace in the repossession of the motor vehicle; or

(2) contain, or provide for the execution of, a power of attorney by the retail buyer appointing, as the buyer's agent in the repossession of the vehicle, the holder or a person acting on the holder's behalf.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.412. BUYER'S WAIVER. (a) A retail installment contract may not:

(1) provide for a waiver of the retail buyer's rights of action against the holder or a person acting on the holder's behalf for an illegal act committed in:

(A) the collection of payments under the contract; or

(B) the repossession of the motor vehicle; or

(2) provide that the retail buyer agrees not to assert against the holder a claim or defense arising out of the sale.

(b) An act or agreement of the retail buyer before or at the time of the making of a retail installment contract or a purchase under the contract does not waive any provision of this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.413. TRANSFER OF EQUITY. (a) With the written consent of the holder, a retail buyer may transfer at any time the buyer's equity in the motor vehicle subject to the retail installment contract to another person.

(b) The holder may charge for the transfer of equity an amount that does not exceed $25.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 16, eff. September 1, 2011.

Sec. 348.414. AUTOMOBILE CLUB MEMBERSHIP OFFERED IN CONNECTION WITH RETAIL INSTALLMENT CONTRACT. (a) A retail seller may, at the time a retail installment contract is executed, offer to sell to the retail buyer an automobile club membership.

(b) The retail seller shall give the retail buyer written notice at the time the retail installment contract is executed that the retail buyer:

(1) is not required to purchase the membership as a condition for approval of the contract; and

(2) is entitled to cancel the membership and receive a full refund of the purchase price of the membership before the 31st day after the date the contract is executed.

(c) The retail seller shall notify the retail buyer if the membership includes services that are provided by the manufacturer as part of the motor vehicle purchase.

(d) The amount charged for a membership as authorized by Subsection (a) must be reasonable.

Added by Acts 2013, 83rd Leg., R.S., Ch. 355 (H.B. 2462), Sec. 2, eff. September 1, 2013.

SUBCHAPTER F. LICENSING; ADMINISTRATION OF CHAPTER

Sec. 348.501. LICENSE REQUIRED. (a) A person may not act as a holder under this chapter unless the person:

(1) is an authorized lender or a credit union; or

(2) holds a license issued under this chapter.

(b) A person who is required to hold a license under this chapter must ensure that each office at which retail installment transactions are made, serviced, held, or collected under this chapter is licensed or otherwise authorized to make, service, hold, or collect retail installment transactions in accordance with this chapter and rules implementing this chapter.

(c) A license holder under this chapter who engages in the sale

of a motor vehicle to be used as a principal dwelling must meet the surety bond or recovery fund fee requirements, as applicable, of the holder's residential mortgage loan originator under Section 180.058.

(d) A person may not use any device, subterfuge, or pretense to evade the application of this section.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 18, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 676 (H.B. 2438), Sec. 8, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 15, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(13), eff. September 1, 2011.

Sec. 348.5015. RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSE REQUIRED. (a) In this section, "Nationwide Mortgage Licensing System and Registry" and "residential mortgage loan originator" have the meanings assigned by Section 180.002.

(b) Unless exempt under Section 180.003, or acting under the temporary authority described under Section 180.0511, an individual who acts as a residential mortgage loan originator in the sale of a motor vehicle to be used as a principal dwelling must:

(1) be licensed to engage in that activity under this chapter;

(2) be enrolled with the Nationwide Mortgage Licensing System and Registry as required by Section 180.052; and

(3) comply with other applicable requirements of Chapter 180 and rules adopted under that chapter.

(c) Subject to Section 14.112, the finance commission shall adopt rules establishing procedures for applying for issuing, renewing, and enforcing a license under this section. In adopting rules under this subsection, the finance commission shall ensure that:

(1) the minimum eligibility requirements for issuance of a license are the same as the requirements of Section 180.055;

(2) the minimum eligibility requirements for renewal of a license are the same as the requirements of Section 180.059; and

(3) the applicant pays:

(A) an investigation fee in a reasonable amount determined by the commissioner; and

(B) a license fee in an amount determined as provided by Section 14.107.

(d) The finance commission may adopt rules under this chapter as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 16, eff. June 19, 2009.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 695 (S.B. 2330), Sec. 6, eff. November 24, 2019.
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 34, eff. September 1, 2019.

Sec. 348.502. APPLICATION REQUIREMENTS. (a) The application for a license under this chapter must:

(1) be under oath;

(2) identify the applicant's principal parties in interest; and

(3) contain other relevant information that the commissioner requires.

(b) On the filing of a license application, the applicant shall pay to the commissioner:

(1) an investigation fee not to exceed $200; and

(2) a license fee in an amount determined as provided by Section 14.107.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 18, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 35, eff. September 1, 2019.

Sec. 348.503. INVESTIGATION OF APPLICATION. On the filing of an application and payment of the required fees, the commissioner shall conduct an investigation to determine whether to issue the license.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 18, eff. Sept. 1, 2001.

Sec. 348.504. APPROVAL OR DENIAL OF APPLICATION. (a) The commissioner shall approve the application and issue to the applicant a license under this chapter if the commissioner finds that:

(1) the financial responsibility, experience, character, and general fitness of the applicant are sufficient to:

(A) command the confidence of the public; and

(B) warrant the belief that the business will be operated lawfully and fairly, within the purposes of this chapter; and

(2) the forms and contracts to be used by the applicant are appropriate and adequate to protect the interests of retail buyers.

(b) If the commissioner does not find the eligibility requirements of Subsection (a), the commissioner shall notify the applicant.

(c) If an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (b), the applicant is entitled to a hearing not later than the 60th day after the date of the request.

(d) The commissioner shall approve or deny the application not later than the 60th day after the date of the filing of a completed application with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. The commissioner and the applicant may agree to a later date in writing.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 18, eff. Sept. 1, 2001.

Sec. 348.505. DISPOSITION OF FEES ON DENIAL OF APPLICATION. If the commissioner denies the application, the commissioner shall retain the investigation fee and shall return to the applicant the license fee submitted with the application.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 18, eff. Sept. 1, 2001.

Sec. 348.5055. LICENSE TERM. A license issued under this chapter is valid for the period prescribed by finance commission rule

adopted under Section 14.112.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 36, eff. September 1, 2019.

Sec. 348.506. LICENSE FEE. Not later than the 30th day before the date the license expires, a license holder shall pay to the commissioner for each license held a fee in an amount determined as provided by Section 14.107.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 18, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 37, eff. September 1, 2019.

Sec. 348.5065. GROUNDS FOR REFUSAL TO RENEW. The commissioner may refuse to renew the license of a person who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 38, eff. September 1, 2019.

Sec. 348.507. EXPIRATION OF LICENSE ON FAILURE TO PAY FEE. If the fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on that day.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 18, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 39, eff. September 1, 2019.

Sec. 348.508. LICENSE SUSPENSION OR REVOCATION. After notice and opportunity for a hearing, the commissioner may suspend or revoke a license if the commissioner finds that:

(1) the license holder failed to pay the license fee, an examination fee, an investigation fee, or another charge imposed by

the commissioner;

(2) the license holder, knowingly or without the exercise of due care, violated this chapter or a rule adopted or order issued under this chapter; or

(3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 18, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 40, eff. September 1, 2019.

Sec. 348.509. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE OF NEW LICENSE AFTER REVOCATION. The commissioner may reinstate a suspended license or issue a new license on application to a person whose license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the commissioner's denial of an original application for the license.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 18, eff. Sept. 1, 2001.

Sec. 348.510. SURRENDER OF LICENSE. A license holder may surrender a license issued under this chapter by delivering to the commissioner:

(1) the license; and

(2) a written notice of the license's surrender.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 18, eff. Sept. 1, 2001.

Sec. 348.511. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR SURRENDER. (a) The suspension, revocation, or surrender of a license issued under this chapter does not affect the obligation of a contract between the license holder and a retail buyer entered into before the suspension, revocation, or surrender.

(b) Surrender of a license does not affect the license holder's

civil or criminal liability for an act committed before surrender.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 18, eff. Sept. 1, 2001.

Sec. 348.512. TRANSFER OR ASSIGNMENT OF LICENSE. A license may be transferred or assigned only with the approval of the commissioner.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 18, eff. Sept. 1, 2001.

Sec. 348.513. ADOPTION OF RULES. (a) The finance commission may adopt rules to:

(1) enforce this chapter; or

(2) modify the standard form as required by Section 348.0091 to:

(A) conform to the provisions of the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) or a regulation issued under authority of that Act;

(B) address any official commentary or other interpretation by a federal agency relating to the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) or a regulation issued under authority of that Act; or

(C) address a judicial interpretation by a state or federal court relating to the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) or a regulation issued under authority of that Act.

(b) The commissioner shall recommend proposed rules to the finance commission.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 18, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 676 (H.B. 2438), Sec. 9, eff. September 1, 2009.

Sec. 348.514. EXAMINATION; ACCESS TO RECORDS. (a) At the times the commissioner considers necessary, the commissioner or the commissioner's representative shall:

(1) examine each place of business of each license holder; and

(2) investigate the license holder's transactions and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business regulated under this chapter.

(b) The license holder shall:

(1) give the commissioner or the commissioner's representative free access to the license holder's office, place of business, files, safes, and vaults; and

(2) allow the commissioner or the commissioner's representative to make a copy of an item that may be investigated under Subsection (a)(2).

(c) During an examination or investigation the commissioner or the commissioner's representative may administer oaths and examine any person under oath on any subject pertinent to a matter that the commissioner is authorized or required to consider, investigate, or secure information about under this chapter.

(d) All information relating to the examination or investigation process is confidential, including:

(1) information obtained from the license holder;

(2) the examination report;

(3) instructions and attachments; and

(4) correspondence between the license holder and the commissioner or the commissioner's representative relating to an examination or investigation of the license holder.

(e) A license holder's violation of Subsection (b) is a ground for the suspension or revocation of the license.

(f) An examination of a license holder's place of business may be made only:

(1) after advance notice; and

(2) during normal business hours.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 18, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 676 (H.B. 2438), Sec. 10, eff. September 1, 2009.

Sec. 348.515. GENERAL INVESTIGATION. To discover a violation of this chapter or to obtain information required under this chapter, the commissioner or the commissioner's representative may investigate

the records, including books, accounts, papers, and correspondence, of a person, including a license holder, who the commissioner has reasonable cause to believe is violating this chapter, regardless of whether the person claims to not be subject to this chapter.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 18, eff. Sept. 1, 2001.

Sec. 348.516. PAYMENT OF EXAMINATION COSTS AND ADMINISTRATION EXPENSES. A license holder shall pay to the commissioner an amount determined as provided by Section 14.107 and assessed by the commissioner to cover the direct and indirect costs of an examination and a proportionate share of general administrative expenses.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 18, eff. Sept. 1, 2001.

Sec. 348.517. LICENSE HOLDER'S RECORDS; DOCUMENT RETENTION REQUIREMENTS. (a) A license holder shall maintain a record of each retail installment transaction made under this chapter as is necessary to enable the commissioner to determine whether the license holder is complying with this chapter.

(b) A license holder shall keep the record until the later of:

(1) the fourth anniversary of the date of the retail installment transaction; or

(2) the second anniversary of the date on which the final entry is made in the record.

(c) A record described by Subsection (a) must be prepared in accordance with accepted accounting practices.

(d) The commissioner shall accept a license holder's system of records if the system discloses the information reasonably required under Subsection (a).

(e) A license holder shall keep each obligation signed by a retail buyer at an office in this state designated by the license holder unless the obligation is transferred under an agreement that gives the commissioner access to the obligation.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 18, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 676 (H.B. 2438), Sec. 11, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 676 (H.B. 2438), Sec. 12, eff. September 1, 2009.

Sec. 348.518. SHARING OF INFORMATION. To ensure consistent enforcement of law and minimization of regulatory burdens, the commissioner and the Texas Department of Motor Vehicles may share information, including criminal history information, relating to a person licensed under this chapter. Information otherwise confidential remains confidential after it is shared under this section.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 18, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3D.03, eff. September 1, 2009.

CHAPTER 349. PENALTIES AND LIABILITIES

SUBCHAPTER A. CIVIL PENALTIES

Sec. 349.001. LIABILITY FOR CONTRACTING FOR, CHARGING, OR RECEIVING EXCESSIVE AMOUNT. (a) A person who violates this subtitle by contracting for, charging, or receiving interest or time price differential greater than the amount authorized by this subtitle is liable to the obligor for an amount equal to:

(1) twice the amount of the interest or time price differential contracted for, charged, or received; and

(2) reasonable attorney's fees set by the court.

(b) A person who violates this subtitle by contracting for, charging, or receiving a charge, other than interest or time price differential, greater than the amount authorized by this subtitle is liable to the obligor for an amount equal to:

(1) the greater of:

(A) three times the amount computed by subtracting the amount of the charge authorized by this subtitle from the amount of the charge contracted for, charged, or received; or

(B) $2,000 or 20 percent of the amount of the principal balance, whichever is less; and

(2) reasonable attorney's fees set by the court.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended

by Acts 1999, 76th Leg., ch. 62, Sec. 7.24(a), eff. Sept. 1, 1999.

Sec. 349.002. LIABILITY FOR CHARGES EXCEEDING TWICE AMOUNT AUTHORIZED. (a) A person who violates this subtitle by contracting for, charging, or receiving interest or time price differential that in an aggregate amount exceeds twice the total amount of interest or time price differential authorized by this subtitle is liable to the obligor as an additional penalty for all principal or principal balance, as well as all interest or time price differential.

(b) A person who is liable under Subsection (a) is also liable for reasonable attorney's fees incurred by the obligor in enforcing this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.25(a), eff. Sept. 1, 1999.

Sec. 349.003. LIABILITY FOR FAILURE TO PERFORM OR FOR PERFORMANCE OF PROHIBITED ACT. (a) Except as provided by this subtitle, a person who fails to perform a requirement specifically imposed on the person by this subtitle or who commits an act prohibited by this subtitle is liable to the obligor for an amount that does not exceed an amount computed under one, but not both, of the following:

(1) three times the actual economic loss to the obligor that results from the violation; or

(2) if the violation was material and the violation induced the obligor to enter into a transaction that the obligor would not have entered if the violation had not occurred, twice the interest or time price differential contracted for, charged, or received, not to exceed:

(A) $2,000 in a transaction in which the amount financed does not exceed $5,000; or

(B) $4,000 in a transaction in which the amount financed exceeds $5,000.

(b) A person who is liable under Subsection (a) is also liable for reasonable attorney's fees set by the court.

(c) In a judicial proceeding under Subsection (a)(2), the court determines whether the violation is material and the finder of fact

determines whether the violation induced the obligor to enter into the transaction.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 349.004. LIABILITY RELATED TO CRIMINAL OFFENSE. In addition to other applicable penalties, a person who commits an offense under Section 349.502 is liable to the obligor for an amount equal to:

(1) the principal of and all charges contracted for or collected on each loan made without the authority required by Chapter 342 or 346; and

(2) reasonable attorney's fees incurred by the obligor.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.56, eff. Sept. 1, 1999.

Sec. 349.005. LIABILITY FOR VIOLATING INJUNCTION. (a) A person who violates an injunction issued under this subtitle is liable to this state for a civil penalty that does not exceed $1,000 for each violation.

(b) For purposes of this section, a district court that issues an injunction under this subtitle shall retain jurisdiction, and the cause shall be continued.

(c) The attorney general may petition the court for recovery of the civil penalty prescribed by this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER B. GENERAL LIMITATIONS ON LIABILITY

Sec. 349.101. NO LIABILITY IF VIOLATION UNINTENTIONAL AND FROM BONA FIDE ERROR OR IF IN CONFORMITY WITH OTHER LAW. (a) A person is not liable under Section 349.001, 349.002, or 349.003 if the person shows by a preponderance of evidence that:

(1) the violation:

(A) was not intentional; and

(B) resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such a

violation; or

(2) the violation was an act done or omitted in good faith in conformity with:

(A) a rule adopted under, or interpretation of, this title by a state agency, board, or commission;

(B) the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.); or

(C) a rule or regulation adopted under, or interpretation of, the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) by an agency, board, or commission of the United States.

(b) The exception from liability provided by Subsection (a)(2) is not affected by the fact that after the act or omission occurs, the rule, regulation, or interpretation in conformity with which the act was done or omitted is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 349.102. LIABILITY FOR MULTIPLE VIOLATIONS IN ONE TRANSACTION. (a) A person who would be liable under Sections 349.001 and 349.003 as a result of the same transaction is liable only for the penalties provided by Section 349.001.

(b) An obligor is entitled to only one recovery for multiple violations of this subtitle that occur in the same transaction.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 349.103. LIMITATION ON MULTIPLE RECOVERY OF PENALTIES. (a) An administrative penalty, fine, settlement, or assurance of voluntary compliance under this title or federal law that is assessed by or agreed to with an administrative agency or the attorney general shall be considered and applied as a bar or credit to recovery of further fines, penalties, or enhanced damages for substantially the same act, practice, or violation in a suit or other proceeding brought by a private litigant under this title, the Business & Commerce Code, or other applicable law of this state. This section does not apply to a claim for restitution for unreimbursed actual damages.

(b) A suit or other proceeding by a private litigant does not affect or restrict any state or federal agency from pursuing a person for any administrative remedy, including an administrative penalty. An administrative agency of this state, however, shall consider as a mitigating factor any relief recovered in a private suit or proceeding when the agency determines an administrative remedy.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 4.07, eff. September 1, 2005.

SUBCHAPTER C. LIMITING LIABILITY BY CORRECTING VIOLATION

Sec. 349.201. CORRECTION RESULTING IN NO LIABILITY. (a) A person is not liable to an obligor for a violation of this subtitle if:

(1) not later than the 60th day after the date on which the person actually discovered the violation, the person corrects the violation as to that obligor by:

(A) performing the required act; or

(B) refunding the amount in excess of the amount authorized by law; and

(2) the person gives to the obligor written notice of the violation as provided by Section 349.204 before the obligor:

(A) gives written notice of that violation; or

(B) files an action alleging that violation.

(b) For purposes of Subsection (a), "actually discovered" refers to the time of the discovery of the violation in fact and not to the time when an ordinarily prudent person, through reasonable diligence, could or should have discovered or known as a matter of law or fact of the violation. Actual discovery of a violation in one transaction may constitute actual discovery of the same violation in other transactions if the violation actually discovered is of such a nature that it would necessarily be repeated and would be clearly apparent in the other transactions without the necessity of examining all of the other transactions.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 349.202. CORRECTION OF VIOLATION OF FAILURE TO ACT OR PERFORMING PROHIBITED ACT RESULTING IN LIMITED LIABILITY. (a)

Liability to an obligor for a violation of this subtitle to which Section 349.003 applies is limited as provided by this section if, after the 60-day period described by Section 349.201(a)(1) but before the time the obligor gives written notice of that violation or files an action alleging that violation, the violation is corrected as to that obligor by:

(1) the performance of the required act; and

(2) giving to the obligor written notice of the violation as provided by Section 349.204.

(b) The liability of any person for the violation to the obligor as described by Subsection (a) is limited for each transaction to an amount that does not exceed one, but not both, of the following:

(1) the actual economic loss suffered by the obligor as a result of the violation; or

(2) the time price differential or interest contracted for, charged, or received, not to exceed $2,000, if:

(A) the violation was material; and

(B) the violation induced the obligor to enter into a transaction that the obligor would not have entered if the violation had not occurred.

(c) A person who is liable under Subsection (b) is also liable for reasonable attorney's fees set by the court.

(d) In a judicial proceeding under Subsection (b)(2), the court determines whether the violation is material and the finder of fact determines whether the violation induced the obligor to enter into the transaction.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 349.203. CORRECTION OF VIOLATION OF CHARGING EXCESSIVE AMOUNTS RESULTING IN LIMITED LIABILITY. (a) This section applies only to a violation of this subtitle to which Section 349.001 applies and that results from:

(1) contracting for, charging, or receiving interest or time price differential that exceeds the amount authorized by law if the excess is directly and solely attributable to and computed on the amount of a charge other than the interest or time price differential; or

(2) contracting for, charging, or receiving a charge, other than interest or time price differential, that exceeds the amount authorized by law.

(b) If, after the 60-day period described by Section 349.201(a)(1) but before the time an obligor gives written notice of the violation or files an action alleging the violation, the violation is corrected as to the obligor by refunding the amount of the excess and giving to the obligor written notice of the violation as provided by Section 349.204, the liability of any person to that obligor is limited for each transaction to an amount that does not exceed:

(1) the time price differential or interest contracted for, charged, or received, not to exceed $2,000; and

(2) reasonable attorney's fees set by the court.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 349.204. GIVING WRITTEN NOTICE. (a) For purposes of this subchapter, written notice is given to a person by delivering the notice to the person or the person's agent or attorney of record:

(1) in person; or

(2) by United States mail to the address shown on the most recent documents in the transaction.

(b) Deposit of a notice as registered or certified mail in a postage-paid, properly addressed wrapper in a post office or official depository under the care and custody of the United States Postal Service is prima facie evidence of the delivery of the notice to the person to whom it is addressed.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 349.205. CORRECTION EXCEPTION AVAILABLE TO ALL SIMILARLY SITUATED. If in a single transaction more than one person may be liable for a violation of this subtitle, compliance with Section 349.201, 349.202, or 349.203 by any of those persons entitles each to the protection provided by that section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER D. LIMITING LIABILITY BY LATE REGISTRATION OR LICENSURE

Sec. 349.301. PAYMENT OF FEES. A person who registers or obtains or renews a license under this title after the date on which the person was required to register or to obtain or renew the license may limit the person's liability as provided by this subchapter by paying to the commissioner:

(1) all prior registration or license fees that the person should have paid under this title; and

(2) except as provided by Section 349.302(a), a late filing fee as provided by this subchapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 41, eff. September 1, 2019.

Sec. 349.302. LATE FILING FEE FOR REGISTERING OR RENEWAL OF REGISTRATION. (a) A person who renews a registration not later than the 30th day after the date on which the registration expires is not required to pay a late filing fee.

(b) The late filing fee is $250 for:

(1) registering after the time registration is required under this title; or

(2) renewal of a registration after the day prescribed by Subsection (a).

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 349.303. LATE FILING FEE FOR OBTAINING OR RENEWING LICENSE. (a) The late filing fee for renewing an expired license is $1,000 if the license:

(1) was in good standing when it expired; and

(2) is renewed not later than the 180th day after its expiration date.

(b) The late filing fee is $10,000 for:

(1) obtaining a license after the time it is required under this title; or

(2) renewing an expired license to which Subsection (a) does not apply.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 349.304. EFFECT OF COMPLIANCE WITH SUBCHAPTER FOR REGISTRANT OR LICENSE HOLDER. (a) A person who pays the applicable registration fees and late filing fee as provided by Section 349.301 is considered for all purposes to have had the required registration for the periods for which the registration fees have been paid.

(b) A person who renews an expired license and pays the applicable license fees and, if required, a late filing fee as provided by Section 349.301 is considered for all purposes to have held the required license as if it had not expired.

(c) A person who obtains a license and pays the applicable license fees and the late filing fee under Section 349.301 is considered for all purposes to have held the license for the period during which it was required but only as to a loan on which the person has contracted for, charged, or received interest that does not exceed the amount that would have been allowed for the loan under Chapter 303.

(d) A person who under this section is considered to have been registered or to have held a license is not subject to any liability, forfeiture, or penalty, other than as provided by this subchapter, relating to the person's not having been registered or not holding a license during the period for which the registration or license fees and late filing fee are paid under Section 349.301.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 349.305. EFFECT OF COMPLIANCE WITH SUBCHAPTER ON PERSON OTHER THAN REGISTRANT OR LICENSE HOLDER. A benefit provided to a person under Section 349.304 also applies to that person's employees or other agents, employers, predecessors, successors, and assigns but does not apply to any other person required to be licensed under this title.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER E. PROCEDURES FOR CIVIL ACTIONS

Sec. 349.401. VENUE. An action under this chapter must be

brought in the county in which:

(1) the transaction was entered; or

(2) the defendant resides when the action is filed.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 349.402. LIMITATION PERIOD. (a) Except as provided by Subsection (b), an action under this chapter must be brought before the later of:

(1) the fourth anniversary of the date of the loan or retail installment transaction with respect to which the violation occurred; or

(2) the second anniversary of the date on which the violation occurred.

(b) An action under this chapter with respect to an open-end credit transaction must be brought before the second anniversary of the date on which the violation occurred.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 349.403. CLASS ACTION. (a) In a class action that alleges one or more violations of this subtitle and is determined by the court to be maintainable as a class action, the class may recover the amount of actual damages proximately caused to the members of the class as a result of the violations.

(b) The court may assess as a penalty:

(1) for each obligor who is named as a class representative at the time that the action is determined to be maintainable as a class action, the amount that could be recovered by the person under this chapter; and

(2) for other class members, an amount set by the court under Subsection (c) and subject to Subsection (d).

(c) In determining the award amount, the court shall consider, in addition to other relevant factors:

(1) the amount of any actual damages awarded;

(2) the frequency and persistence of violations by the creditor;

(3) the resources of the creditor;

(4) the number of persons adversely affected; and

(5) the extent to which the creditor's violation was intentional or reckless.

(d) A minimum recovery is not applicable to a class member to whom Subsection (b)(2) applies. The total recovery under Subsection (b)(2) in a class action or series of class actions arising out of the same violation of this subtitle by the same person may not exceed the lesser of $100,000 or five percent of the net worth of the person.

(e) In a successful action to enforce the liability under this section, the court may award:

(1) costs of the action; and

(2) reasonable attorney's fees set by the court.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 349.404. LIABILITY UNDER SUBCHAPTER IN LIEU OF LIABILITY UNDER CONSUMER CREDIT PROTECTION ACT. (a) A final judgment granting or denying relief under the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) bars a subsequent action under Section 349.001, 349.002, or 349.003 by the same obligor with respect to the same violation.

(b) If an obligor brings an action under the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) against a person after a final judgment has been rendered under Section 349.001, 349.002, or 349.003 in favor of the obligor against that person with respect to the same violation, that person in the same or an independent action may sue that obligor to recover:

(1) the amount of the judgment rendered under Section 349.001, 349.002, or 349.003; and

(2) reasonable attorney's fees set by the court.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER F. CRIMINAL OFFENSES

Sec. 349.501. OFFENSE OF CHARGES EXCEEDING TWICE AMOUNT AUTHORIZED. (a) A person commits an offense if the person contracts for, charges, or receives interest, time price differential, and other charges that in an aggregate amount exceed twice the total amount of interest, time price differential, and other charges

authorized by this subtitle.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $100.

(c) Each contract or transaction that violates Subsection (a) is a separate offense.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 349.502. OFFENSE OF ENGAGING IN LENDING BUSINESS WITHOUT PROPER AUTHORITY. (a) A person commits an offense if the person engages in a business that is subject to Chapter 342, 346, or 351 without holding the license or other authorization required under that chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $1,000.

(c) Each loan made without the authority required by Chapter 342, 346, or 351 is a separate offense.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.57, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 2, eff. September 1, 2007.

Sec. 349.503. CERTAIN PROCEEDINGS IN CONNECTION WITH SALE-LEASEBACK TRANSACTION. (a) If a buyer in a sale-leaseback transaction requires the seller to provide a check as security for the transaction, the buyer may not file or threaten to file a charge, complaint, or criminal prosecution under Section 31.03, 31.04, or 32.41, Penal Code, based on nonpayment of the check.

(b) A buyer who violates Subsection (a) commits an offense. An offense under this section is a misdemeanor punishable by a fine of not more than $1,000.

Added by Acts 2001, 77th Leg., ch. 1235, Sec. 19, eff. Sept. 1, 2001.

CHAPTER 350. REQUIREMENTS AND LIMITATIONS APPLICABLE TO CONSUMER CREDITORS NOT LICENSED OR REGISTERED UNDER THIS TITLE

Sec. 350.001. APPLICABILITY. (a) This chapter applies to a person who extends credit primarily for personal, family, or household use and not for a business, commercial, investment, or agricultural purpose. For the purposes of this chapter, credit means the right granted to a debtor to defer payment of debt or to incur debt and defer its payment. A creditor is subject to this chapter if the creditor charges a finance charge or extends credit payable in one or more installments.

(b) This chapter does not apply to a person who is:

(1) licensed or registered under this title or Title 3; or

(2) exempt from licensing or registration under this title.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 1.04, eff. September 1, 2005.

Sec. 350.002. PREVENTION OF EVASION. A person may not use any device, subterfuge, or pretense to evade the application of this section.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 1.04, eff. September 1, 2005.

Sec. 350.003. COMPLIANCE WITH FAIR TRADE PRACTICES ACT. A creditor who is not licensed, registered, or otherwise exempt under this title must comply with the requirements of 15 U.S.C. Section 45. An enforcement action to compel compliance under this section may include an action to enjoin illegal activities or order restitution.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 1.04, eff. September 1, 2005.

Sec. 350.004. PENALTIES. Chapter 349 applies to violations of this chapter and the rules adopted under this chapter.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 1.04, eff. September 1, 2005.

CHAPTER 351. PROPERTY TAX LENDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 351.001. SHORT TITLE. This chapter may be cited as the Property Tax Lender License Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.

Sec. 351.002. DEFINITIONS.In this chapter:

(1) "Property tax lender" means a person that engages in activity requiring a license under Section 351.051. The term does not include:

(A) a person who is sponsored by a licensed property tax lender to assist with or perform the acts of a property tax lender; or

(B) a person who performs only clerical functions such as delivering a loan application to a property tax lender, gathering or requesting information related to a property tax loan application on behalf of the prospective borrower or property tax lender, word processing, sending correspondence, or assembling files.

(2) "Property tax loan" means an advance of money:

(A) in connection with a transfer of lien under Section 32.06, Tax Code, or a contract under Section 32.065, Tax Code;

(B) in connection with which the person making the transfer arranges for the payment, with a property owner's written consent, of property taxes and related closing costs on behalf of the property owner in accordance with Section 32.06, Tax Code; and

(C) that is secured by a special lien against property transferred from a taxing unit to the property tax lender and which may be further secured by the lien or security interest created by a deed of trust, security deed, or other security instrument.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.

Sec. 351.0021. AUTHORIZED CHARGES. (a) The contract between a property tax lender and a property owner may require the property owner to pay the following costs after closing:

(1) a reasonable fee for filing the release of a tax lien

authorized under Section 32.06(b), Tax Code;

(2) a reasonable fee for a payoff statement authorized under Section 32.06(f-3), Tax Code;

(3) a reasonable fee for providing information regarding the current balance owed by the property owner authorized under Section 32.06(g), Tax Code;

(4) reasonable and necessary attorney's fees, recording fees, and court costs for actions that are legally required to respond to a suit filed under Chapter 33, Tax Code, or to perform a foreclosure, including fees required to be paid to an official and fees for an attorney ad litem;

(5) to the extent permitted by the United States Bankruptcy Code, attorney's fees and court costs for services performed after the property owner files a voluntary bankruptcy petition;

(6) a reasonable fee for title examination and preparation of an abstract of title by an attorney, a title company, or a property search company authorized to do business in this state;

(7) a processing fee for insufficient funds, as authorized under Section 3.506, Business & Commerce Code;

(8) a fee for collateral protection insurance, as authorized under Chapter 307;

(9) a prepayment penalty, unless the lien transferred is on residential property owned and used by the property owner for personal, family, or household purposes;

(10) recording expenses incurred in connection with a modification necessary to preserve a borrower's ability to avoid a foreclosure proceeding; and

(11) fees for copies of transaction documents requested by the property owner.

(b) Notwithstanding Subsection (a)(11), a property tax lender shall provide a property owner:

(1) one free copy of the transaction documents at closing; and

(2) an additional free copy of the transaction documents on the property owner's request following closing.

(c) A property tax lender or any successor in interest may not charge:

(1) any fee, other than interest, after closing in connection with the transfer of a tax lien unless the fee is expressly authorized under this section; or

(2) any interest that is not expressly authorized under Section 32.06, Tax Code.

(d) Except for charges authorized under Subsections (a)(1), (2), (3), (9), and (11), any amount charged by a property tax lender after closing must be for services performed by a person that is not an employee of the property tax lender.

(e) The finance commission may adopt rules implementing and interpreting this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 622 (S.B. 762), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 206 (S.B. 247), Sec. 1, eff. May 29, 2013.

Sec. 351.0022. WAIVER PROHIBITED. Except as specifically permitted by this chapter or Chapter 32, Tax Code, a property owner may not waive or limit a requirement imposed on a property tax lender by this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 206 (S.B. 247), Sec. 2, eff. May 29, 2013.

Sec. 351.0023. SOLICITATION OF LOANS; NOTICE. (a) A property tax lender who solicits property tax loans by mail, e-mail, or other print or electronic media shall include on the first page of all solicitation materials, in at least 12-point boldface type, a notice substantially similar to the following: "YOUR TAX OFFICE MAY OFFER DELINQUENT TAX INSTALLMENT PLANS THAT MAY BE LESS COSTLY TO YOU. YOU CAN REQUEST INFORMATION ABOUT THE AVAILABILITY OF THESE PLANS FROM THE TAX OFFICE."

(b) A property tax lender who solicits property tax loans by broadcast media, including a television or radio broadcast, shall state the following in the broadcast: "YOUR TAX OFFICE MAY OFFER DELINQUENT TAX INSTALLMENT PLANS THAT MAY BE LESS COSTLY TO YOU. YOU CAN REQUEST INFORMATION ABOUT THE AVAILABILITY OF THESE PLANS FROM THE TAX OFFICE."

(c) A property tax lender may not, in any manner, advertise or cause to be advertised a false, misleading, or deceptive statement or

representation relating to a rate, term, or condition of a property tax loan.

(d) A property tax lender who refers to a rate or charge in an advertisement shall state the rate or charge fully and clearly. If the rate or charge is a rate of finance charge, the advertisement must include the annual percentage rate and specifically refer to the rate as an "annual percentage rate." The advertisement must state that the annual percentage rate may be increased after the contract is executed, if applicable. The advertisement may not refer to any other rate, except that a simple annual rate that is applied to the unpaid balance of a property tax loan may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(e) If an advertisement for a property tax loan includes the number of payments, period of repayment, amount of any payment, or amount of any finance charges, the advertisement must, in addition to any applicable requirements of Subsection (d), include:

(1) the terms of repayment, including the repayment obligations over the full term of the loan and any balloon payment;

(2) the annual percentage rate, and must refer to that rate as the annual percentage rate; and

(3) a statement that the lender may increase the annual percentage rate after the contract is executed, if applicable.

(f) The finance commission may adopt rules to implement and enforce this section.

(g) Notwithstanding Section 14.251, the commissioner may assess an administrative penalty under Subchapter F, Chapter 14, against a property tax lender who violates this section, regardless of whether the violation is knowing or wilful.

Added by Acts 2013, 83rd Leg., R.S., Ch. 206 (S.B. 247), Sec. 2, eff. May 29, 2013.

Sec. 351.003. SECONDARY MARKET TRANSACTIONS. (a) Except as provided by Subsection (b), this chapter does not prohibit a property tax lender from receiving compensation from a party other than the property tax loan applicant for the sale, transfer, assignment, or release of rights on the closing of a property tax loan transaction.

(b) A person may not sell, transfer, assign, or release rights to a property tax loan to a person who is not licensed under Section

351.051 or exempt from the application of this chapter under Section 351.051(c).

(c) The finance commission shall adopt rules to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 206 (S.B. 247), Sec. 3, eff. May 29, 2013.

Sec. 351.004. AFFILIATED BUSINESS ARRANGEMENTS. A property tax lender may conduct business under this chapter in an office, office suite, room, or place of business in which any other business is conducted or in combination with any other business unless the commissioner:

(1) determines after a hearing that the conduct of the other business in that office, office suite, room, or place of business has concealed an evasion of this chapter; and

(2) orders the lender in writing to desist from the conduct of the other business in that office, office suite, room, or place of business.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1382 (S.B. 1620), Sec. 1, eff. September 1, 2009.

Sec. 351.005. APPLICATION OF TAX CODE. This chapter does not affect the application of Section 32.06 or 32.065, Tax Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.

Sec. 351.006. ENFORCEMENT. (a) In addition to any other applicable enforcement provisions, Subchapters E, F, and G, Chapter 14, apply to a violation of this chapter or Section 32.06 or 32.065,

Tax Code, in connection with property tax loans.

(b) Notwithstanding Section 14.251, the commissioner may assess an administrative penalty under Subchapter F, Chapter 14, against a person who violates Section 32.06(b-1), Tax Code, regardless of whether the violation is knowing or wilful.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 622 (S.B. 762), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1182 (H.B. 3453), Sec. 11, eff. September 1, 2011.

Sec. 351.007. RULES. The finance commission may adopt rules to ensure compliance with this chapter and Sections 32.06 and 32.065, Tax Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.

Sec. 351.008. EXAMINATION OF LENDERS; ACCESS TO RECORDS. (a) The commissioner or the commissioner's representative shall, at the times the commissioner or the representative considers necessary:

(1) examine each place of business of each property tax lender; and

(2) investigate the lender's transactions, including loans, and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business regulated under this chapter and Sections 32.06 and 32.065, Tax Code.

(b) The property tax lender shall:

(1) give the commissioner or the commissioner's representative free access to the lender's office, place of business, files, safes, and vaults; and

(2) allow the commissioner or the representative to make a copy of an item that may be investigated under Subsection (a)(2).

(c) During an examination, the commissioner or the commissioner's representative may administer oaths and examine any person under oath on any subject pertinent to a matter that the

commissioner or the representative is authorized or required to consider, investigate, or secure information about under this chapter or Section 32.06 or 32.065, Tax Code.

(d) Information obtained under this section is confidential.

(e) A property tax lender's violation of Subsection (b) is a ground for the suspension or revocation of the lender's license.

Added by Acts 2009, 81st Leg., R.S., Ch. 1382 (S.B. 1620), Sec. 2, eff. September 1, 2009.

Sec. 351.009. GENERAL INVESTIGATION. (a) To discover a violation of this chapter or Section 32.06 or 32.065, Tax Code, or to obtain information required under this chapter or Section 32.06 or 32.065, Tax Code, the commissioner or the commissioner's representative may investigate the records, including books, accounts, papers, and correspondence, of a person, including a property tax lender, who the commissioner or the representative has reasonable cause to believe is violating this chapter or Section 32.06 or 32.065, Tax Code, regardless of whether the person claims to not be subject to this chapter or Section 32.06 or 32.065, Tax Code.

(b) For the purposes of this section, a person who advertises, solicits, or otherwise represents that the person is willing to make a property tax loan is presumed to be engaged in the business described by Section 351.051.

Added by Acts 2009, 81st Leg., R.S., Ch. 1382 (S.B. 1620), Sec. 2, eff. September 1, 2009.

Sec. 351.010. REFUSAL TO ALLOW EXAMINATION OR INSPECTION. A property tax lender who fails or refuses to permit an examination or investigation authorized by this subchapter violates this chapter. The failure or refusal is grounds for the suspension or revocation of the lender's license.

Added by Acts 2009, 81st Leg., R.S., Ch. 1382 (S.B. 1620), Sec. 2, eff. September 1, 2009.

Sec. 351.011. VERIFICATION OF NET ASSETS. If the commissioner

questions the amount of a property tax lender's net assets, the commissioner may require certification by an independent certified public accountant that:

(1) the accountant has reviewed the property tax lender's books, other records, and transactions during the reporting year;

(2) the books and other records are maintained using generally accepted accounting principles; and

(3) the property tax lender meets the net assets requirement of Section 351.153.

Added by Acts 2009, 81st Leg., R.S., Ch. 1382 (S.B. 1620), Sec. 2, eff. September 1, 2009.

Sec. 351.012. APPLICABILITY OF CHAPTER. This chapter applies to a property tax loan that is extended to a person for payment of property taxes on real property located in this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 42, eff. September 1, 2019.

SUBCHAPTER B. AUTHORIZED ACTIVITIES; LICENSE

Sec. 351.051. LICENSE REQUIRED. (a) A person must hold a license issued under this chapter to:

(1) engage in the business of making, transacting, or negotiating property tax loans; or

(2) contract for, charge, or receive, directly or indirectly, in connection with a property tax loan subject to this chapter, a charge, including interest, compensation, consideration, or another expense, authorized under this chapter or Chapter 32, Tax Code.

(b) A person may not use any device, subterfuge, or pretense to evade the application of this section.

(c) Except as provided by Section 351.003, this chapter does not apply to:

(1) any of the following entities or an employee of any of the following entities, if the employee is acting for the benefit of the employer:

(A) a bank, savings bank, or savings and loan association, or a subsidiary or an affiliate of a bank, savings bank,

or savings and loan association; or

(B) a state or federal credit union, or a subsidiary, affiliate, or credit union service organization of a state or federal credit union; or

(2) an individual who:

(A) is related to the property owner within the second degree of consanguinity or affinity, as determined under Chapter 573, Government Code; or

(B) makes five or fewer property tax loans in any consecutive 12-month period from the individual's own funds.

(d) A property tax lender licensed under this chapter is not required to be licensed under Chapter 156 or any other provision of this code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 622 (S.B. 762), Sec. 5, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 206 (S.B. 247), Sec. 4, eff. May 29, 2013.

Sec. 351.0515. RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSE REQUIRED. (a) In this section, "Nationwide Mortgage Licensing System and Registry" and "residential mortgage loan originator" have the meanings assigned by Section 180.002.

(b) Unless exempt under Section 180.003, or acting under the temporary authority described under Section 180.0511, an individual who acts as a residential mortgage loan originator in the making, transacting, or negotiating of a property tax loan for a principal dwelling must:

(1) be individually licensed to engage in that activity under this chapter;

(2) be enrolled with the Nationwide Mortgage Licensing System and Registry as required by Section 180.052; and

(3) comply with other applicable requirements of Chapter 180 and rules adopted under that chapter.

(c) Subject to Section 14.112, the finance commission shall adopt rules establishing procedures for issuing, renewing, and

enforcing an individual license under this section. In adopting rules under this subsection, the finance commission shall ensure that:

(1) the minimum eligibility requirements for issuance of an individual license are the same as the requirements of Section 180.055;

(2) the minimum eligibility requirements for renewal of an individual license are the same as the requirements of Section 180.059; and

(3) the applicant pays:

(A) an investigation fee in a reasonable amount determined by the commissioner; and

(B) a license fee in an amount determined as provided by Section 14.107.

(d) The finance commission may adopt rules under this chapter as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

Added by Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 17, eff. June 19, 2009.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 695 (S.B. 2330), Sec. 7, eff. November 24, 2019.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 43, eff. September 1, 2019.

Sec. 351.052. ISSUANCE OF MORE THAN ONE LICENSE FOR PROPERTY TAX LENDER. (a) The commissioner may issue more than one license to a property tax lender on compliance with this chapter for each license.

(b) A person who is required to hold a license under this chapter must hold a separate license for each office at which property tax loans are made, negotiated, serviced, held, or collected under this chapter.

(c) A license is not required under this chapter for a place of business:

(1) devoted to accounting or other recordkeeping; and

(2) at which property tax loans are not made, negotiated, serviced, held, or collected under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.

Sec. 351.053. AREA OF BUSINESS; PROPERTY TAX LOANS BY MAIL OR ONLINE. (a) A property tax lender is not limited to making property tax loans to residents of the community in which the office for which the license or other authority is granted is located.

(b) A property tax lender may make, negotiate, arrange, and collect property tax loans by mail or online from a licensed office.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 44, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 45, eff. September 1, 2019.

Sec. 351.054. NOTICE TO TAXING UNIT. (a) A transferee of a tax lien must include with the sworn document executed by the borrower and filed with the collector of a taxing unit under Section 32.06(a-1), Tax Code, the information required by this section.

(b) If the transferee is licensed under this chapter, the transferee shall include with the filing the licensee's license number assigned by the commissioner.

(c) If the transferee is exempt from this chapter under Section 351.051(c)(1), the transferee shall include with the filing an affidavit stating the entity's type of organization that qualifies it for the exemption, any charter number assigned by the governmental authority that issued the entity's charter, and the address of the entity's main office.

(d) If the transferee is exempt from this chapter under Section 351.051(c)(2), the transferee shall include a certificate issued by the commissioner indicating the entity's exemption. The commissioner shall establish procedures for issuance of a certificate under this subsection, application requirements, and requirements regarding information that must be submitted with an application.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1,

eff. September 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 206 (S.B. 247), Sec. 5, eff. May 29, 2013.

SUBCHAPTER C. APPLICATION FOR AND ISSUANCE OF LICENSE

Sec. 351.101. APPLICATION REQUIREMENTS. (a) The application for a license under this chapter must:

(1) be under oath;

(2) give the approximate location from which business is to be conducted;

(3) identify the business's principal parties in interest; and

(4) contain other relevant information that the commissioner requires for the findings required under Section 351.104.

(b) On the filing of one or more license applications, the applicant shall pay to the commissioner an investigation fee not to exceed $200.

(c) On the filing of each license application, the applicant shall pay to the commissioner a license fee in an amount determined as provided by Section 14.107.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 46, eff. September 1, 2019.

Sec. 351.102. BOND. (a) If the commissioner requires, an applicant for a license under this chapter shall file with the application a bond that is:

(1) in an amount not to exceed the total of:

(A) $50,000 for the first license; and

(B) $10,000 for each additional license;

(2) satisfactory to the commissioner; and

(3) issued by a surety company qualified to do business as a surety in this state.

(b) The bond must be in favor of this state for the use of this state and the use of a person who has a cause of action under this chapter against the license holder.

(c) The bond must be conditioned on:

(1) the license holder's faithful performance under this chapter and rules adopted under this chapter; and

(2) the payment of all amounts that become due to the state or another person under this chapter during the period for which the bond is given.

(d) The aggregate liability of a surety to all persons damaged by the license holder's violation of this chapter may not exceed the amount of the bond.

(e) A license holder engaged in the business of making, transacting, or negotiating a property tax loan for a principal dwelling must meet the surety bond or recovery fund fee requirement, as applicable, of the holder's residential mortgage loan originator under Section 180.058.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 18, eff. June 19, 2009.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 47, eff. September 1, 2019.

Sec. 351.103. INVESTIGATION OF APPLICATION. On the filing of an application and, if required, a bond, and on payment of the required fees, the commissioner shall conduct an investigation to determine whether to issue the license.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.

Sec. 351.104. APPROVAL OR DENIAL OF APPLICATION. (a) The commissioner shall approve the application and issue to the applicant a license to make property tax loans under this chapter if the commissioner finds that:

(1) the financial responsibility, experience, character,

and general fitness of the applicant are sufficient to:

(A) command the confidence of the public; and

(B) warrant the belief that the business will be operated lawfully and fairly, within the purposes of this chapter; and

(2) the applicant has net assets of at least $25,000 available for the operation of the business.

(b) If the commissioner does not find that the eligibility requirements of Subsection (a) are met, the commissioner shall notify the applicant.

(c) If an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (b), the applicant is entitled to a hearing not later than the 60th day after the date of the request.

(d) The commissioner shall approve or deny the application not later than the 60th day after the date of the filing of a completed application with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. The commissioner and the applicant may agree to a later date in writing.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.

Sec. 351.105. DISPOSITION OF FEES ON DENIAL OF APPLICATION. If the commissioner denies the application, the commissioner shall retain the investigation fee and shall return to the applicant the license fee submitted with the application.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.

Sec. 351.106. LICENSE TERM. A license issued under this chapter is valid for the period prescribed by finance commission rule adopted under Section 14.112.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 48, eff. September 1, 2019.

SUBCHAPTER D. LICENSE

Sec. 351.151. NAME AND PLACE ON LICENSE. (a) A license must state:

(1) the name of the license holder; and

(2) the address of the office from which the business is to be conducted.

(b) A license holder may not conduct business under this chapter under a name or at a place of business in this state other than the name or office stated on the license.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.

Sec. 351.152. LICENSE DISPLAY. A license holder shall display a license at the place of business provided on the license.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.

Sec. 351.153. MINIMUM ASSETS FOR LICENSE. A license holder shall maintain for each office for which a license is held net assets of at least $25,000 that are used or readily available for use in conducting the business of that office.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.

Sec. 351.1535. GROUNDS FOR REFUSAL TO RENEW. The commissioner may refuse to renew the license of a person who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 49, eff. September 1, 2019.

Sec. 351.154. LICENSE FEE. Not later than the 30th day before the date the license expires, a license holder shall pay to the commissioner for each license held a fee in an amount determined as

provided by Section 14.107.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 50, eff. September 1, 2019.

Sec. 351.155. EXPIRATION OF LICENSE ON FAILURE TO PAY FEE. If the fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on that day.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 51, eff. September 1, 2019.

Sec. 351.156. LICENSE SUSPENSION OR REVOCATION. After notice and opportunity for a hearing, the commissioner may suspend or revoke a license if the commissioner finds that:

(1) the license holder failed to pay the license fee, an examination fee, an investigation fee, or another charge imposed by the commissioner under this chapter;

(2) the license holder, knowingly or without the exercise of due care, violated this chapter or Section 32.06 or 32.065, Tax Code, or a rule adopted or an order issued under this chapter or Section 32.06 or 32.065, Tax Code;

(3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application; or

(4) the license holder has failed to ensure that an individual acting as a residential mortgage loan originator, as defined by Section 180.002, in the making, transacting, or negotiating of a property tax loan for a principal dwelling is licensed under this chapter in accordance with Section 351.0515.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1104 (H.B. 10), Sec. 19, eff. June 19, 2009.
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 52, eff. September 1, 2019.

Sec. 351.157. CORPORATE CHARTER FORFEITURE. (a) A license holder who violates this chapter is subject to revocation of the holder's license and, if the license holder is a corporation, forfeiture of its charter.

(b) When the attorney general is notified of a violation of this chapter and revocation of a license, the attorney general shall file suit in a district court in Travis County, if the license holder is a corporation, for forfeiture of the license holder's charter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.

Sec. 351.158. LICENSE SUSPENSION OR REVOCATION FILED WITH PUBLIC RECORDS. The decision of the commissioner on the suspension or revocation of a license and the evidence considered by the commissioner in making the decision shall be filed in the public records of the commissioner.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.

Sec. 351.159. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE OF NEW LICENSE AFTER REVOCATION. The commissioner may reinstate a suspended license or issue a new license on application to a person whose license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the commissioner's denial of an original application for the license.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1,

eff. September 1, 2007.

Sec. 351.160. SURRENDER OF LICENSE. A license holder may surrender a license issued under this chapter by delivering to the commissioner:

(1) the license; and

(2) a written notice of the license's surrender.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.

Sec. 351.161. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR SURRENDER. (a) The suspension, revocation, or surrender of a license issued under this chapter does not affect the obligation of a contract between the license holder and a debtor entered into before the revocation, suspension, or surrender.

(b) Surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.

Sec. 351.162. MOVING AN OFFICE. (a) A license holder shall give written notice to the commissioner before the 30th day preceding the date the license holder moves an office from the location provided on the license.

(b) The commissioner shall amend a license holder's license accordingly.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.

Sec. 351.163. TRANSFER OR ASSIGNMENT OF LICENSE. A license may be transferred or assigned only with the approval of the commissioner.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1,

eff. September 1, 2007.

Sec. 351.164. REPORTING REQUIREMENT. (a) Each year, a license holder shall file with the commissioner a report that contains relevant information concerning its transactions conducted under this chapter.

(b) A report under this section must be:

(1) under oath; and

(2) in the form prescribed by the commissioner.

(c) A report under this section is confidential.

(d) Annually the commissioner shall prepare and publish a consolidated analysis and recapitulation of reports filed under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1220 (H.B. 2138), Sec. 1, eff. September 1, 2007.

CHAPTER 352. TAX REFUND ANTICIPATION LOANS

Sec. 352.001. DEFINITIONS. In this chapter:

(1) "Borrower" means an individual who receives the proceeds of a refund anticipation loan.

(2) "Facilitator" means a person who processes, receives, or accepts for delivery an application for a refund anticipation loan, delivers a check in payment of refund anticipation loan proceeds, or in any other manner acts to allow the making of a refund anticipation loan.

(3) "Lender" means a person who extends credit to a borrower in the form of a refund anticipation loan.

(4) "Refund anticipation loan" means a loan borrowed by a taxpayer based on the taxpayer's anticipated federal income tax refund.

(5) "Refund anticipation loan fee" means a fee imposed or other consideration required by the facilitator or the lender for a refund anticipation loan. The term does not include a fee usually imposed or other consideration usually required by the facilitator in the ordinary course of business for services not related to the making of loans, including a fee imposed for tax return preparation or for the electronic filing of a tax return.

Added by Acts 2007, 80th Leg., R.S., Ch. 135 (H.B. 1344), Sec. 1, eff. September 1, 2007.
Renumbered from Finance Code, Section 351.001 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(17), eff. September 1, 2009.

Sec. 352.002. RESTRICTION ON ACTING AS FACILITATOR. (a) A person may not, individually or in conjunction or cooperation with another person, act as a facilitator unless the person is:

(1) engaged in the business of preparing tax returns, or employed by a person engaged in the business of preparing tax returns;

(2) primarily involved in financial services or tax preparations;

(3) authorized by the Internal Revenue Service as an e-file provider; and

(4) registered with the commissioner as a facilitator under Section 352.003.

(b) This section does not apply to:

(1) a bank, thrift, savings association, industrial bank, or credit union operating under the laws of the United States or this state;

(2) an affiliate that is a servicer of a person described by Subdivision (1) operating under the name of that person; or

(3) any person who acts solely as an intermediary and does not interact directly with a taxpayer in the making of the refund anticipation loan.

Added by Acts 2007, 80th Leg., R.S., Ch. 135 (H.B. 1344), Sec. 1, eff. September 1, 2007.
Renumbered from Finance Code, Section 351.002 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(17), eff. September 1, 2009.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.002(4), eff. September 1, 2009.

Sec. 352.003. REGISTRATION OF FACILITATORS. (a) To register

as a facilitator, a person must provide to the commissioner:

(1) a list of each location in this state at which e-file providers authorized by the Internal Revenue Service file tax returns on behalf of borrowers for whom the facilitator acts to allow the making of a refund anticipation loan; and

(2) a processing fee for each location included on the list furnished under Subdivision (1).

(a-1) A registration issued under this section is valid for the period prescribed by finance commission rule adopted under Section 14.112.

(b) The commissioner shall prescribe the processing fee in an amount necessary to cover the costs of administering this section.

(c) The finance commission by rule shall establish a deadline for the submission of the information and fee required by Subsection (a) for initial issuance and renewal of registrations under this section.

(c-1) After the applicable deadline for initial or renewal registrations, a facilitator may amend the registration required under Subsection (a) to reflect any change in the information provided by the registration.

(d) The commissioner shall make available to the public a list of facilitators registered under this section.

(e) The commissioner may prescribe the registration form.

(f) The commissioner may refuse to renew the registration of a person who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 135 (H.B. 1344), Sec. 1, eff. September 1, 2007.
Renumbered from Finance Code, Section 351.003 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(17), eff. September 1, 2009.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 53, eff. September 1, 2019.

Sec. 352.004. DISCLOSURE REQUIREMENTS. (a) A facilitator to which Section 352.002 applies shall discuss with and clearly disclose to a borrower, after the borrower's tax return has been prepared and

before the loan is closed:

(1) the refund anticipation loan fee schedule;

(2) a written statement disclosing:

(A) that a refund anticipation loan is a loan and is not the borrower's actual income tax refund;

(B) that the taxpayer may file an income tax return electronically without applying for a refund anticipation loan;

(C) that the borrower is responsible for repayment of the loan and related fees if the tax refund is not paid or is insufficient to repay the loan;

(D) any fee that will be charged if the loan is not approved;

(E) the average time, as published by the Internal Revenue Service, within which a taxpayer can expect to receive a refund for an income tax return filed:

(i) electronically, and the refund is:

(a) deposited directly into the taxpayer's bank account; or

(b) mailed to the taxpayer; and

(ii) by mail, and the refund is:

(a) deposited directly into the taxpayer's financial institution account; or

(b) mailed to the taxpayer;

(F) that the Internal Revenue Service does not guarantee:

(i) payment of the full amount of the anticipated refund; or

(ii) a specific date on which it will mail a refund or deposit the refund into a taxpayer's financial institution account; and

(G) the estimated time within which the proceeds of the refund anticipation loan will be paid to the borrower if the loan is approved; and

(3) the following information, specific to the borrower:

(A) the estimated total fees for the loan; and

(B) the estimated annual percentage rate for the loan, calculated using the guidelines established under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.).

(b) A refund anticipation loan fee schedule required by Subsection (a)(1) must be a listing or table of refund anticipation

loan fees charged by the lender for refund anticipation loan amounts. The schedule shall:

(1) list separately each fee imposed related to the making of a refund anticipation loan;

(2) list the total amount of fees imposed related to the making of a refund anticipation loan; and

(3) include, for each stated loan amount, the estimated annual percentage rate for the loan, calculated using the guidelines established under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.).

(c) A facilitator who advertises or markets refund anticipation loans in Spanish shall offer any borrower the option of receiving a Spanish-language printed disclosure and loan contract. A facilitator who negotiates a loan with a borrower in Spanish shall offer that borrower the option of receiving a Spanish-language printed disclosure and loan contract.

Added by Acts 2007, 80th Leg., R.S., Ch. 135 (H.B. 1344), Sec. 1, eff. September 1, 2007.
Renumbered from Finance Code, Section 351.004 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(17), eff. September 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.002(5), eff. September 1, 2009.

Sec. 352.005. INVESTIGATION BY COMMISSIONER. The commissioner shall:

(1) monitor the operations of a facilitator to ensure compliance with this chapter; and

(2) receive and investigate complaints against a facilitator or a person acting as a facilitator.

Added by Acts 2007, 80th Leg., R.S., Ch. 135 (H.B. 1344), Sec. 1, eff. September 1, 2007.
Renumbered from Finance Code, Section 351.005 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(17), eff. September 1, 2009.

Sec. 352.006. REVOCATION OF REGISTRATION. (a) The commissioner may revoke the registration of a facilitator if the commissioner concludes that the facilitator has violated this chapter. The commissioner shall recite the basis of the decision in an order revoking the registration.

(b) If the commissioner proposes to revoke a registration, the facilitator is entitled to notice and an opportunity for a hearing before the commissioner or a hearings officer, who shall propose a decision to the commissioner. The commissioner or hearings officer shall prescribe the time and place of the hearing if the facilitator makes a written request for a hearing not later than the 20th day after the date the facilitator receives the notice of the proposed revocation. The hearing is governed by Chapter 2001, Government Code.

(c) A facilitator aggrieved by a ruling, order, or decision of the commissioner is entitled to appeal to a district court in the county in which the hearing was held. An appeal under this subsection is governed by Chapter 2001, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 135 (H.B. 1344), Sec. 1, eff. September 1, 2007.
Renumbered from Finance Code, Section 351.006 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(17), eff. September 1, 2009.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 54, eff. September 1, 2019.

Sec. 352.007. ADMINISTRATIVE PENALTY. The commissioner may assess an administrative penalty of $500 against a person for each knowing and wilful violation of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 135 (H.B. 1344), Sec. 1, eff. September 1, 2007.
Renumbered from Finance Code, Section 351.007 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(17), eff. September 1, 2009.

Sec. 352.008. PREEMPTION OF LOCAL ORDINANCE. This chapter preempts a local ordinance or rule regulating refund anticipation

loans.

Added by Acts 2007, 80th Leg., R.S., Ch. 135 (H.B. 1344), Sec. 1, eff. September 1, 2007.
Renumbered from Finance Code, Section 351.008 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(17), eff. September 1, 2009.

Sec. 352.009. APPLICABILITY OF CHAPTER. This chapter applies to a refund anticipation loan that is extended to a person who is located in this state at the time the loan is made.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 55, eff. September 1, 2019.

CHAPTER 353. COMMERCIAL MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 353.001. DEFINITIONS. In this chapter:

(1) "Commercial vehicle" means a motor vehicle that is not used primarily for personal, family, or household use. The term includes:

(A) a motor vehicle with a gross vehicular weight of 10,001 pounds or more;

(B) a motor vehicle that will be owned by a corporation, limited liability company, limited partnership, or other business entity formed, organized, or registered in this state, another state, or another country; and

(C) a motor vehicle that will be part of a fleet of five or more vehicles owned by the same person.

(2) "Debt cancellation agreement" means an agreement of the holder of the retail installment contract to waive:

(A) all or part of the difference between the amount owed under a retail installment contract and the amount paid under a physical damage insurance policy maintained by the retail buyer or its assign, in the event of a total loss or theft of the commercial vehicle;

(B) all or part of the amount owed under the retail installment contract, in the event of the death of the retail buyer; or

(C) one or more payments owed under the retail installment contract, in the event of the disability of the retail buyer.

(3) "Heavy commercial vehicle" means:

(A) a commercial vehicle that has a gross vehicular weight of 19,000 pounds or more; or

(B) a trailer or semitrailer designed for use in combination with a vehicle described by Paragraph (A).

(4) "Holder" means a person who is:

(A) a retail seller; or

(B) the assignee or transferee of a retail installment contract.

(5) "Motor vehicle" has the meaning assigned by Section 348.001.

(6) "Precomputed earnings method" means a method of computing the time price differential in which the time price differential is computed at the inception of the contract based on the principal balance for the full contract term, as if the principal balance under the contract will not decline over the term of the contract, and in which the retail buyer agrees to pay the total of payments that includes both the principal balance of the contract and the time price differential.

(7) "Retail buyer" means a person who purchases or agrees to purchase a commercial vehicle from a retail seller in a retail installment transaction.

(8) "Retail installment contract" means one or more instruments entered into in this state that evidence a retail installment transaction. The term includes a security agreement and a document that evidences a bailment or lease described by Section 353.003.

(9) "Retail installment transaction" means a transaction in which a retail buyer purchases a commercial vehicle from a retail seller other than principally for the purpose of resale and agrees with the retail seller to pay part or all of the cash price in one or more deferred installments.

(10) "Retail seller" means a person in the business of selling commercial vehicles to retail buyers in retail installment transactions.

(11) "Scheduled installment earnings method" means a method of computing the time price differential by applying a daily rate to

the unpaid principal balance as if each scheduled payment will be paid on the payment's scheduled installment date.

(12) "Time price differential" means the total amount added to the principal balance to determine the balance of the retail buyer's indebtedness under a retail installment contract.

(13) "True daily earnings method" means a method of computing the time price differential by applying a daily rate to the unpaid principal balance based on the actual payment date as provided by Section 353.016.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.002. PRESUMPTION REGARDING NONCOMMERCIAL VEHICLES; EXCEPTION. (a) A motor vehicle that is not described by Section 353.001(1)(A), (B), or (C) or a motor vehicle that is of a type typically used for personal, family, or household use, as determined by finance commission rule, is presumed not to be a commercial vehicle.

(b) Notwithstanding Subsection (a), if a retail buyer represents in writing that a motor vehicle is not for personal, family, or household use, or that the vehicle is for commercial use, a retail seller or holder may rely on that representation unless the retail seller or holder, as applicable, has actual knowledge that the representation is not true.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.003. BAILMENT OR LEASE AS RETAIL INSTALLMENT TRANSACTION. (a) A bailment or lease of a commercial vehicle is a retail installment transaction if the bailee or lessee:

(1) contracts to pay as compensation for use of the vehicle an amount that is substantially equal to or exceeds the value of the vehicle; and

(2) on full compliance with the bailment or lease is bound to become the owner or, for no or nominal additional consideration, has the option to become the owner of the vehicle.

(b) An agreement for the lease of a commercial vehicle does not

create a retail installment transaction by merely providing that the rental price is permitted or required to be adjusted under the agreement as determined by the amount realized on the sale or other disposition of the vehicle, as provided by Section 501.112, Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.004. CLASSIFICATION AS RETAIL INSTALLMENT TRANSACTION UNAFFECTED. A transaction is not excluded as a retail installment transaction because:

(1) the retail seller arranges to transfer the retail buyer's obligation;

(2) the amount of any charge in the transaction is determined by reference to a chart or other information furnished by a financing institution;

(3) a form for all or part of the retail installment contract is furnished by a financing institution; or

(4) the credit standing of the retail buyer is evaluated by a financing institution.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.005. CASH PRICE. (a) The cash price is the price at which the retail seller offers in the ordinary course of business to sell for cash the goods or services that are subject to the transaction. An advertised price does not necessarily establish a cash price.

(b) The cash price does not include any finance charge.

(c) At the retail seller's option, the cash price may include:

(1) the price of accessories;

(2) the price of services related to the sale;

(3) the price of service contracts;

(4) taxes; and

(5) fees for license, title, and registration.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17,

eff. September 1, 2011.

Sec. 353.006. ITEMIZED CHARGE. An amount in a retail installment contract is an itemized charge if the amount is not included in the cash price and is the amount of:

(1) fees for registration, certificate of title, and license and any additional registration fees charged by a deputy as authorized by rules adopted under Section 520.0071, Transportation Code;

(2) any taxes;

(3) fees or charges prescribed by law and connected with the sale or inspection of the commercial vehicle;

(4) charges authorized for insurance, service contracts, and warranties by Subchapter C; and

(5) advances or payments authorized under Section 353.402(b) or (c) made by the retail seller to or for the benefit of the retail buyer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1287 (H.B. 2202), Sec. 3, eff. September 1, 2013.

Sec. 353.007. ADDITIONAL CHARGES PERMITTED. (a) In addition to the amounts allowed under Sections 353.005 and 353.006, the following amounts may be included as an itemized charge or in the cash price in a retail installment contract for a commercial vehicle:

(1) any fees prescribed by law;

(2) any amounts charged by a titling or registration service relating to the sale;

(3) any other amount agreed to by the retail buyer and retail seller, including amounts payable to the retail seller or another person for the provision of goods or services relating to:

(A) the commercial vehicle;

(B) the sale or use of the commercial vehicle; or

(C) the retail buyer's business in which the commercial vehicle will be used; and

(4) an amount paid to the retail seller or other person as consideration for a debt cancellation agreement.

(b) If a charge for a debt cancellation agreement is included in the contract, the contract and debt cancellation agreement must each conspicuously disclose that the debt cancellation agreement is optional.

(c) Notwithstanding any other law, a charge for a debt cancellation agreement is not a charge for insurance, and the sale, provision, or waiving of a balance owed or other action relating to a debt cancellation agreement is not considered insurance or engaging in the business of insurance.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.008. PRINCIPAL BALANCE; INCLUSION OF DOCUMENTARY FEE. (a) The principal balance under a retail installment contract is computed by:

(1) adding:

(A) the cash price of the commercial vehicle;

(B) each amount included in the retail installment contract for an itemized charge; and

(C) subject to Subsection (c), a documentary fee for services rendered for or on behalf of the retail buyer in handling and processing documents relating to the sale of the commercial vehicle; and

(2) subtracting from the results under Subdivision (1) the amount of the retail buyer's down payment in money, goods, or both.

(b) The computation of the principal balance may include an amount authorized under Section 353.402(b).

(c) For a documentary fee to be included in the principal balance of a retail installment contract:

(1) the retail seller must charge the documentary fee to cash buyers and credit buyers; and

(2) the documentary fee may not exceed an amount agreed to in writing by the retail seller and retail buyer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17,

eff. September 1, 2011.

Sec. 353.009. APPLICABILITY OF CHAPTER. (a) Except as provided by this section, this chapter applies to a retail installment transaction for a commercial vehicle if the retail installment contract states that this chapter applies.

(b) If a retail installment contract does not state that this chapter applies, the transaction is governed by Chapter 348, and this chapter does not apply.

(c) This chapter does not affect or apply to a loan made or the business of making loans under other law of this state and does not affect a rule of law applicable to a retail installment sale that is not a retail installment transaction.

(d) The provisions of this chapter defining specific rates and amounts of charges and requiring certain credit disclosures to be made control over any contrary law of this state respecting those subjects.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.010. APPLICABILITY OF OTHER STATUTES TO RETAIL INSTALLMENT TRANSACTION. (a) A loan or interest statute of this state, other than Chapter 303, does not apply to a retail installment transaction subject to this chapter.

(b) Except as provided by this chapter, an applicable statute, including Title 1 and Chapter 322, Business & Commerce Code, or a principle of common law continues to apply to a retail installment transaction unless it is displaced by this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.011. FEDERAL DISCLOSURE REQUIREMENTS. If a disclosure requirement of this chapter and one of a federal law, including a regulation or an interpretation of federal law, are inconsistent or conflict, federal law controls and the inconsistent or conflicting disclosures required by this chapter need not be given.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.012. ADDITIONAL INFORMATION ALLOWED IN CONTRACT. Information not required by this chapter may be included in a retail installment contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.013. ORDER OF ITEMS IN CONTRACT. Items required by this chapter to be in a retail installment contract are not required to be stated in the order set forth in this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.014. APPLICABILITY OF INSURANCE PREMIUM FINANCING PROVISIONS. Chapter 651, Insurance Code, does not apply to a retail installment transaction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.015. CONDITIONAL DELIVERY AGREEMENT. (a) In this section, "conditional delivery agreement" means a contract between a retail seller and prospective retail buyer under the terms of which the retail seller allows the prospective retail buyer the use and benefit of a commercial vehicle for a specified term.

(b) A retail seller and prospective retail buyer may enter into a conditional delivery agreement.

(c) A conditional delivery agreement is:

(1) an enforceable contract; and

(2) void on the execution of a retail installment contract between the parties to the conditional delivery agreement for the sale of the commercial vehicle that is the subject of the conditional delivery agreement.

(d) A conditional delivery agreement may only confer rights consistent with this section and may not confer any legal or equitable rights of ownership, including ownership of the commercial vehicle that is the subject of the conditional delivery agreement.

(e) A conditional delivery agreement may not exceed a term of 15 days.

(f) If a prospective retail buyer tenders to a retail seller a trade-in motor vehicle in connection with a conditional delivery agreement:

(1) the parties must agree on the value of the trade-in motor vehicle;

(2) the conditional delivery agreement must contain the agreed value of the trade-in motor vehicle described by Subdivision (1); and

(3) the retail seller must use reasonable care to conserve the trade-in motor vehicle while the vehicle is in the retail seller's possession.

(g) If the parties to a conditional delivery agreement do not subsequently enter into a retail installment contract for the sale of the commercial vehicle that is the subject of the conditional delivery agreement, the retail seller shall, not later than the seventh day after termination of the conditional delivery agreement:

(1) deliver to the prospective retail buyer any trade-in motor vehicle that the prospective retail buyer tendered in connection with the conditional delivery agreement in the same or substantially the same condition as it was at the time of execution of the agreement and shall return any down payment or other consideration received from the prospective retail buyer in connection with the agreement; or

(2) if the trade-in motor vehicle cannot be returned in the same or substantially the same condition as it was at the time of execution of the conditional delivery agreement, deliver to the prospective retail buyer a sum of money equal to the agreed value of the trade-in motor vehicle as described by Subsection (f) and shall return any down payment or other consideration described by Subdivision (1).

(h) Any money that a retail seller is obligated to provide a prospective retail buyer under Subsection (g) must be tendered at the same time that the trade-in motor vehicle is delivered for return to the prospective retail buyer or when the trade-in motor vehicle would

have been delivered if the vehicle was damaged or could not be returned.

(i) If a prospective retail buyer returns a commercial vehicle under a conditional delivery agreement at the request of the retail seller, the retail seller, notwithstanding the period prescribed by Subsection (g), must return the trade-in vehicle at the same time that the commercial vehicle under the conditional delivery agreement is returned by the prospective retail buyer.

(j) The prospective retail buyer shall return the commercial vehicle received under the conditional delivery agreement in the same or substantially the same condition as it was at the time of the execution of the conditional delivery agreement.

(k) An amount paid or required to be paid by the retail seller under Subsection (g) is subject to review by the commissioner. If the commissioner determines that the retail seller in fact owes the prospective retail buyer a certain amount under Subsection (g), the commissioner may order the retail seller to pay the amount to the prospective retail buyer. If the trade-in motor vehicle is not returned by the retail seller in accordance with this section and the retail seller does not pay the prospective retail buyer an amount equal to the agreed value of the trade-in motor vehicle within the period prescribed by this section, the commissioner may assess an administrative penalty against the retail seller in an amount that is reasonable in relation to the value of the trade-in motor vehicle. The commissioner shall provide notice to the retail seller and the prospective retail buyer of the commissioner's determination under this subsection.

(l) Not later than the 30th day after the date the parties receive notice of the commissioner's determination under Subsection (k), the retail seller or prospective retail buyer may file with the commissioner an appeal of the commissioner's determination requesting a time and place for a hearing before a hearings officer designated by the commissioner. A hearing under this subsection is governed by Chapter 2001, Government Code. After the hearing, based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the commissioner shall enter a final order.

(m) A person who files an appeal under Subsection (l) is required to pay a deposit to secure the payment of the costs of the hearing in a reasonable amount as determined by the commissioner, unless the person cannot afford to pay the deposit and files an

affidavit to that effect with the hearings officer in the form and content prescribed by finance commission rule. The entire deposit must be refunded to the person if the person prevails at the hearing. If the person does not prevail, any portion of the deposit in excess of the costs of the hearing assessed against the person is refundable.

(n) Notice of the commissioner's final order under Subsection (l), given to the person in accordance with Chapter 2001, Government Code, must include a statement of the person's right to judicial review of the order.

(o) The hearings officer may order the retail seller or the prospective retail buyer, or both, to pay reasonable expenses incurred by the commissioner in connection with obtaining a final order under Subsection (l), including attorney's fees, investigative costs, and witness fees.

(p) This section does not:

(1) apply to a bailment agreement under Section 353.003; or

(2) create a private right of action.

(q) Except as otherwise provided by this section, the commissioner has exclusive jurisdiction to enforce this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.016. COMPUTATION OF TIME PRICE DIFFERENTIAL USING TRUE DAILY EARNINGS METHOD. Under the true daily earnings method, the earned time price differential is computed by multiplying the daily rate of the time price differential by the number of days the actual unpaid principal balance is outstanding. Under this method:

(1) a payment is credited at the time received, with a payment received before the scheduled installment date resulting in a greater reduction in the unpaid principal balance than otherwise scheduled, and a payment received after the scheduled installment date resulting in less of a reduction in the unpaid principal balance than otherwise scheduled;

(2) a partial payment is applied first to time price differential with any remainder applied to the unpaid principal balance; and

(3) accrued but unpaid time price differential is not:

(A) added to the unpaid principal balance; or
(B) compounded.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.017. TRANSACTION CONDITIONED ON PURCHASE OF VEHICLE PROTECTION PRODUCT PROHIBITED. (a) In this section, "vehicle protection product" has the meaning assigned by Section 17.45, Business & Commerce Code.

(b) A retail seller may not require as a condition of a retail installment transaction or the cash sale of a commercial vehicle that the buyer purchase a vehicle protection product that is not installed on the vehicle at the time of the transaction.

(c) A violation of this section is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 1.004, eff. September 1, 2017.

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

Sec. 353.101. RETAIL INSTALLMENT CONTRACT GENERAL REQUIREMENTS. (a) A retail installment contract is required for each retail installment transaction in which the retail buyer is purchasing a commercial vehicle. A retail installment contract may be more than one document.

(b) A retail installment contract must be:

(1) in writing;
(2) dated;
(3) signed by the retail buyer and retail seller; and
(4) completed as to all essential provisions before it is signed by the retail buyer except as provided by Subsection (d).

(c) The printed part of a retail installment contract, other than instructions for completion, must be in at least eight-point type unless a different size of type is required under this subchapter.

(d) If the commercial vehicle is not delivered when the retail installment contract is executed, the following information may be inserted after the contract is executed:

(1) the identifying numbers or marks of the vehicle or similar information; and

(2) the due date of the first installment.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.102. CONTRACT CONDITIONED ON SUBSEQUENT ASSIGNMENT PROHIBITED. (a) A retail installment contract may not be conditioned on the subsequent assignment of the contract to a holder.

(b) A provision in violation of this section is void. This subsection does not affect the validity of other provisions of the contract that may be given effect without the voided provision, and to that extent those provisions are severable.

(c) This section does not create a private right of action.

(d) The commissioner has exclusive jurisdiction to enforce this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.103. TIME PRICE DIFFERENTIAL FOR RETAIL INSTALLMENT CONTRACT. (a) A retail installment contract may provide for:

(1) any amount of time price differential permitted under Section 353.104, 353.105, or 353.106; or

(2) any rate of time price differential not exceeding a yield permitted under Section 353.104, 353.105, or 353.106.

(b) The time price differential may be computed using the:

(1) precomputed earnings method;

(2) scheduled installment earnings method; or

(3) true daily earnings method.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.104. TIME PRICE DIFFERENTIAL FOR CONTRACT WITH EQUAL MONTHLY SUCCESSIVE PAYMENTS. (a) A retail installment contract that is payable in substantially equal successive monthly installments beginning one month after the date of the contract may provide for a time price differential that does not exceed the add-on charge provided by this section.

(b) The add-on charge is $7.50 per $100 per year on the principal balance for a new commercial vehicle, other than a heavy commercial vehicle, designated by the manufacturer by a model year that is not earlier than the year in which the sale is made.

(c) The add-on charge is $10 per $100 per year on the principal balance for:

(1) a new commercial vehicle not covered by Subsection (b);

(2) a used commercial vehicle designated by the manufacturer by a model year that is not more than two years before the year in which the sale is made; or

(3) a new or used heavy commercial vehicle designated by the manufacturer by a model year that is not more than two years before the year in which the sale is made.

(d) The add-on charge is $12.50 per $100 per year on the principal balance for a used commercial vehicle not covered by Subsection (c) that is a commercial vehicle designated by the manufacturer by a model year that is not more than four years before the year in which the sale is made.

(e) For a used commercial vehicle not covered by Subsection (c) or (d), the add-on charge is:

(1) $15 per $100 per year on the principal balance; or

(2) $18 per $100 per year on the principal balance if the principal balance under the retail installment contract does not exceed $300.

(f) The time price differential is computed on the original principal balance under the retail installment contract from the date of the contract until the maturity of the final installment, notwithstanding that the balance is payable in installments.

(g) If the retail installment contract is payable for a period that is shorter or longer than a year or is for an amount that is less or greater than $100, the amount of the maximum time price differential computed under this section is decreased or increased proportionately.

(h) For the purpose of a computation under this section, 16 or

more days of a month may be considered a full month.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.105. USE OF OPTIONAL CEILING. As an alternative to the maximum rate or amount authorized for a time price differential under Section 353.104 or 353.106, a retail installment contract may provide for a rate or amount of time price differential that does not exceed the rate or amount authorized by Chapter 303.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.106. TIME PRICE DIFFERENTIAL FOR OTHER CONTRACTS. A retail installment contract that is payable other than in substantially equal successive monthly installments or the first installment of which is not payable one month from the date of the contract may provide for a time price differential that does not exceed an amount that, having due regard for the schedule of payments, provides the same effective return as if the contract were payable in substantially equal successive monthly installments beginning one month from the date of the contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.107. CHARGE FOR DEFAULT IN PAYMENT OF INSTALLMENT. (a) A retail installment contract may provide that if an installment remains unpaid after the 10th day after the maturity of the installment for a heavy commercial vehicle or after the 15th day after the maturity of the installment for any other commercial vehicle the holder may collect:

(1) a delinquency charge that does not exceed five percent of the amount of the installment; or

(2) interest on the amount of the installment accruing after the maturity of the installment and until the installment is paid in full at a rate that does not exceed the maximum rate

authorized for the contract.

(b) A retail installment contract that provides for the true daily earnings method or the scheduled installment earnings method may provide for the delinquency charge authorized by Subsection (a)(1), the interest authorized by Subsection (a)(2), or both.

(c) Only one delinquency charge under Subsection (a)(1) may be collected on an installment under this section regardless of the duration of the default.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.108. CHARGES FOR COLLECTING DEBT. A retail installment contract may provide for the payment of:

(1) reasonable attorney's fees if the contract is referred for collection to an attorney who is not a salaried employee of the holder;

(2) court costs and disbursements; and

(3) reasonable out-of-pocket expenses incurred in connection with the repossession or sequestration of the commercial vehicle securing the payment of the contract or foreclosure of a security interest in the vehicle, including the costs of storing, reconditioning, and reselling the vehicle, subject to the standards of good faith and commercial reasonableness set by Title 1, Business & Commerce Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.109. ACCELERATION OF DEBT MATURITY. A retail installment contract may not authorize the holder to accelerate the maturity of all or a part of the amount owed under the contract unless:

(1) the retail buyer is in default in the performance of any of the buyer's obligations;

(2) the holder believes in good faith that the prospect of the buyer's payment or performance is impaired; or

(3) the retail buyer or an affiliate of the retail buyer is in default in its obligations under another financing agreement or

leasing agreement held by the same holder or an affiliate of the holder.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.110. DELIVERY OF COPY OF CONTRACT. A retail seller shall:

(1) deliver to the retail buyer a copy of the retail installment contract as accepted by the retail seller; or

(2) mail to the retail buyer at the address shown on the retail installment contract a copy of the retail installment contract as accepted by the retail seller.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.111. BUYER'S RIGHT TO RESCIND CONTRACT. Until the retail seller complies with Section 353.110, a retail buyer who has not received delivery of the commercial vehicle is entitled to:

(1) rescind the contract;

(2) receive a refund of all payments made under or in contemplation of the contract; and

(3) receive the return of all goods traded in to the retail seller under or in contemplation of the contract or, if those goods cannot be returned, to receive the value of those goods.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.112. BUYER'S ACKNOWLEDGMENT OF DELIVERY OF CONTRACT COPY. (a) Any retail buyer's acknowledgment of delivery of a copy of the retail installment contract must:

(1) be in at least 10-point type that is boldfaced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material; and

(2) appear directly above the buyer's signature.

(b) Any retail buyer's acknowledgment conforming to this

section of delivery of a copy of the retail installment contract is, in an action or proceeding by or against a holder of the contract who was without knowledge to the contrary when the holder purchased it, conclusive proof:

(1) that the copy was delivered to the buyer;

(2) that the contract did not contain a blank space that was required to have been completed under this chapter when the contract was signed by the buyer; and

(3) of compliance with Sections 353.011, 353.101, 353.205, 353.403, 353.404, and 353.405.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.113. AMENDMENT OF RETAIL INSTALLMENT CONTRACT. On request by a retail buyer, the holder may agree to one or more amendments to the retail installment contract to:

(1) extend or defer the scheduled due date of all or a part of one or more installments; or

(2) renew, restate, or reschedule the unpaid balance under the contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.114. CHARGES FOR DEFERRING INSTALLMENT. (a) If a retail installment contract is amended to defer all or a part of one or more installments for not longer than three months, the holder may collect from the retail buyer:

(1) an amount computed on the amount deferred for the period of deferment at a rate that does not exceed the effective return for time price differential permitted for a monthly payment retail installment contract; and

(2) the amount of the additional cost to the holder for:

(A) premiums for continuing in force any insurance coverages provided for by the contract; and

(B) any additional necessary official fees.

(b) The minimum charge under Subsection (a)(1) is $1.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.115. CHARGE FOR OTHER AMENDMENT. (a) If the unpaid balance of a retail installment contract is extended, renewed, restated, or rescheduled under this subchapter and Section 353.114 does not apply, the holder may collect an amount computed on the principal balance of the amended contract for the term of the amended contract at the time price differential for a retail installment contract that is applicable after reclassifying the commercial vehicle by its model year at the time of the amendment.

(b) The principal balance of the amended contract is computed by:

(1) adding:

(A) the unpaid balance as of the date of amendment;

(B) the cost of any insurance incidental to the amendment;

(C) the amount of each additional necessary official fee; and

(D) the amount of each accrued delinquency or collection charge; and

(2) if the time price differential was computed using the precomputed earnings method or the scheduled installment earnings method, subtracting from the total computed under Subdivision (1) an amount equal to the prepayment refund credit required by Section 353.120 or 353.121, as applicable.

(c) Subsection (b)(2) does not apply to a retail installment contract in which the time price differential is computed using the true daily earnings method.

(d) The provisions of this chapter relating to acquisition costs under the refund schedule under Section 353.120 do not apply in computing the principal balance of the amended contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.116. CONFIRMATION OF AMENDMENT. An amendment to a retail installment contract must be confirmed in a writing signed by

the retail buyer. The holder shall:

(1) deliver a copy of the confirmation to the buyer; or

(2) mail a copy of the confirmation to the buyer at the buyer's most recent address shown on the records of the holder.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.117. CONTRACT AFTER AMENDMENT. After amendment the retail installment contract is the original contract and each amendment to the original contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.118. PREPAYMENT OF CONTRACT. A retail buyer may prepay a retail installment contract in full at any time before maturity. This section prevails over a conflicting provision of the contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.119. REFUND CREDIT ON PREPAYMENT. (a) This section does not apply to a retail installment contract in which the time price differential is computed using the true daily earnings method.

(b) If a retail buyer prepays a retail installment contract in full or if the holder of the contract demands payment of the unpaid balance of the contract in full before the contract's final installment is due and the time price differential is computed using the precomputed earnings method or the scheduled installment earnings method, the buyer is entitled to receive a refund credit as provided by Section 353.120 or 353.121, as applicable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.120. AMOUNT OF REFUND CREDIT FOR MONTHLY INSTALLMENT CONTRACT. (a) This section:

(1) applies only to a refund credit on the prepayment of a retail installment contract that is payable in substantially equal successive monthly installments beginning one month after the date of the contract; and

(2) does not apply to a retail installment contract in which the time price differential is computed using the true daily earnings method or the scheduled installment earnings method.

(b) On a contract for a commercial vehicle other than a heavy commercial vehicle the minimum amount of the refund credit is computed by:

(1) subtracting an acquisition cost of $25 from the original time price differential; and

(2) multiplying the amount computed under Subdivision (1) by the percentage of refund computed under Subsection (d).

(c) On a contract for a heavy commercial vehicle the minimum amount of the refund credit is computed by:

(1) multiplying the amount of the original time price differential by the percentage of refund computed under Subsection (d); and

(2) subtracting an acquisition cost of $150 from the amount computed under Subdivision (1).

(d) The percentage of refund is computed by:

(1) computing the sum of all of the monthly balances under the contract's schedule of payments; and

(2) dividing the amount computed under Subdivision (1) into the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(A) on the first day, after the date of the prepayment or demand for payment in full, that is the date of a month that corresponds to the date of the month that the first installment is due under the contract; or

(B) if the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the next monthly anniversary date of the contract occurring after the prepayment or demand.

(e) A refund credit is not required if the amount of the refund credit is less than $1.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.121. REFUND ON CONTRACTS USING SCHEDULED INSTALLMENT EARNINGS METHOD. (a) This section:

(1) applies to a retail installment contract:

(A) that includes precomputed time price differential; and

(B) to which Section 353.120 does not apply; and

(2) does not apply to a retail installment contract in which the time price differential is computed using the true daily earnings method.

(b) If a retail installment contract is prepaid in full or if the holder demands payment in full of the unpaid balance before final maturity of the contract, the holder earns time price differential for the period beginning on the date of the contract and ending on the date of the earlier of the prepayment or demand, in an amount that does not exceed the amount allowed by this section.

(c) If prepayment in full or demand for payment in full occurs during an installment period, the holder may retain, in addition to time price differential that accrued during any elapsed installment periods, an amount computed by:

(1) multiplying the simple annual rate under the contract by the unpaid principal balance of the contract determined according to the schedule of payments to be outstanding on the preceding installment due date;

(2) dividing 365 into the product computed under Subdivision (1); and

(3) multiplying the number of days in the period, beginning on the day after the installment due date and ending on the date of the earlier of the prepayment or demand, by the result obtained under Subdivision (2).

(d) In addition to the earned time price differential computed under this section, the holder may also earn a $150 acquisition fee for a heavy commercial vehicle, or a $25 acquisition fee for other commercial vehicles, if the sum of the earned time price differential and the acquisition fee does not exceed the time price differential disclosed in the contract.

(e) The holder shall refund or credit, as applicable, to the

retail buyer the amount computed by subtracting the total amount earned or retained under Subsections (b), (c), and (d) from the total amount of time price differential contracted for and precomputed in the contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.122. REINSTATEMENT OF CONTRACT AFTER DEMAND FOR PAYMENT. After a demand for payment in full under a retail installment contract, the retail buyer and holder of the contract may:

(1) agree to reinstate the contract; and

(2) amend the contract as provided by Section 353.113.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

SUBCHAPTER C. INSURANCE

Sec. 353.201. PROPERTY INSURANCE. (a) A holder may require a retail buyer to insure the commercial vehicle purchased under a retail installment transaction and accessories and related goods subject to the holder's security interest.

(b) The holder may offer to provide insurance on a commercial vehicle purchased under a retail installment transaction and accessories and related goods subject to the holder's security interest, regardless of whether the holder requires a retail buyer to insure the commercial vehicle.

(c) The insurance required by the holder, and the premiums or charges for any insurance that is provided by the holder, must bear a reasonable relationship to:

(1) the amount, term, and conditions of the retail installment contract; and

(2) the existing hazards or risk of loss, damage, or destruction.

(d) Any insurance under this section may not:

(1) cover unusual or exceptional risks; or

(2) provide coverage not ordinarily included in policies issued to the public or for commercial purposes.

(e) The holder may include the cost of the insurance as a separate charge in the contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.202. CREDIT LIFE AND CREDIT HEALTH AND ACCIDENT INSURANCE. (a) A holder may require a retail buyer to provide credit life insurance and credit health and accident insurance.

(b) The holder may offer to provide credit life insurance and credit health and accident insurance, regardless of whether the holder requires a retail buyer to provide the insurance under Subsection (a).

(c) A retail seller may offer involuntary unemployment insurance to the buyer at the time the contract is negotiated or executed.

(d) A holder may include the cost of insurance provided under this section, and a policy or agent fee charged in connection with insurance provided under Subsection (b) or (c), as a separate charge in the contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.203. MAXIMUM AMOUNT OF CREDIT LIFE AND CREDIT HEALTH AND ACCIDENT COVERAGE. (a) At any time the total amount of the policies of credit life insurance in force on one retail buyer on one retail installment contract may not exceed:

(1) the total amount repayable under the contract; and

(2) the greater of the scheduled or actual amount of unpaid indebtedness if the indebtedness is repayable in substantially equal installments.

(b) At any time the total amount of the policies of credit health and accident insurance in force on one retail buyer on one retail installment contract may not exceed the total amount payable under the contract, and the amount of each periodic indemnity payment may not exceed the scheduled periodic payment on the indebtedness.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17,

eff. September 1, 2011.

Sec. 353.204. INSURANCE STATEMENT. (a) If insurance is required in connection with a retail installment contract, the holder shall give to the retail buyer a written statement that clearly and conspicuously states that:

(1) insurance is required in connection with the contract; and

(2) the buyer as an option may furnish the required insurance through:

(A) an existing policy of insurance owned or controlled by the buyer; or

(B) an insurance policy obtained through an insurance company authorized to do business in this state.

(b) A statement under Subsection (a) may be provided with or as part of the retail installment contract or separately.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.205. STATEMENT IF LIABILITY INSURANCE NOT INCLUDED IN CONTRACT. If liability insurance coverage for bodily injury and property damage caused to others is not included in a retail installment contract, the retail installment contract or a separate writing must contain, in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.206. BUYER'S FAILURE TO PROVIDE EVIDENCE OF INSURANCE. (a) If a retail buyer fails to present to the holder reasonable evidence that the buyer has obtained or maintained a coverage required by the retail installment contract, the holder may:

(1) obtain substitute insurance coverage that is

substantially equal to or more limited than the coverage required; and

(2) add the amount of the premium advanced for the substitute insurance to the unpaid balance of the contract.

(b) Substitute insurance coverage under Subsection (a)(1):

(1) may at the holder's option be limited to coverage only of the interest of the holder or the interest of the holder and the buyer; and

(2) must be written at lawful rates in accordance with the Insurance Code by a company authorized to do business in this state.

(c) If substitute insurance is obtained by the holder under Subsection (a), the amendment adding the premium or rescheduling the contract is not required to be signed by the retail buyer. The holder shall deliver to the buyer or send to the buyer's most recent address shown on the records of the holder specific written notice that the holder has obtained substitute insurance.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.207. CHARGES FOR OTHER INSURANCE AND FORMS OF PROTECTION INCLUDED IN RETAIL INSTALLMENT CONTRACT. (a) A retail installment contract may include as a separate charge an amount for insurance coverage that is:

(1) for a risk of loss or liability reasonably related to:

(A) the commercial vehicle;

(B) the use of the commercial vehicle; or

(C) goods or services that:

(i) are related to the commercial vehicle; and

(ii) may ordinarily be insured with a commercial vehicle;

(2) written on policies or endorsement forms prescribed or approved by the commissioner of insurance; and

(3) ordinarily available in policies or endorsements offered to the public or for commercial purposes.

(b) A retail installment contract may include as a separate charge an amount for:

(1) motor vehicle property damage or bodily injury liability insurance;

(2) mechanical breakdown insurance;

(3) participation in a motor vehicle theft protection plan;

(4) insurance to pay all or part of the amount computed by subtracting the proceeds of the retail buyer's basic collision policy on the commercial vehicle from the amount owed on the vehicle in the event of a total loss or theft of the vehicle;

(5) a warranty or service contract relating to the commercial vehicle;

(6) an identity recovery service contract; or

(7) a debt cancellation agreement.

(b-1) In this section, "identity recovery service contract" means an agreement:

(1) to provide identity recovery, as defined by Section 1304.003, Occupations Code;

(2) that is entered into for a separately stated consideration and for a specified term; and

(3) that is financed through a retail installment contract.

(c) Notwithstanding any other law, service contracts and debt cancellation agreements sold by a retail seller of a commercial vehicle to a retail buyer are not subject to Chapter 101 or 226, Insurance Code.

(d) In addition to the charges for insurance coverage permitted under Subsection (a) or (b), a retail installment contract may include a charge for insurance coverage relating to:

(1) the commercial vehicle;

(2) the use of the commercial vehicle; or

(3) the retail installment contract.

(e) Insurance coverage under Subsection (d) may be provided only by:

(1) an insurer authorized under the Insurance Code to engage in the business of insurance in this state; or

(2) if permitted under the Insurance Code, a surplus lines insurer eligible to provide the insurance under Chapter 981, Insurance Code.

(f) A retail installment contract must set forth the amount of each charge for insurance coverage under Subsection (d) and the type of the coverage provided for that charge.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1207 (S.B. 1388), Sec. 2, eff. September 1, 2013.

Sec. 353.208. HOLDER'S DUTY IF INSURANCE IS ADJUSTED OR TERMINATED. (a) If insurance for which a charge is included in or added to a retail installment contract is canceled, adjusted, or terminated, the holder shall, at the holder's option:

(1) apply the amount of the refund for unearned insurance premiums received by the holder to replace required insurance coverage; or

(2) credit the refund to the final maturing installments of the retail installment contract.

(b) If the amount to be applied or credited under Subsection (a) is more than the amount unpaid on the retail installment contract, the holder shall refund to the retail buyer the difference between those amounts.

(c) A cash refund is not required under this section if the amount of the refund is less than $1.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.209. GAIN OR ADVANTAGE FROM INSURANCE NOT ADDITIONAL CHARGE. Any gain or advantage to the holder or the holder's employee, officer, director, agent, general agent, affiliate, or associate from insurance or the provision or sale of insurance under this subchapter is not an additional charge or additional time price differential in connection with a retail installment contract except as specifically provided by this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.210. ADDING TO RETAIL INSTALLMENT CONTRACT PREMIUMS FOR INSURANCE ACQUIRED AFTER TRANSACTION. (a) A retail buyer and holder may agree to add to the unpaid balance of a retail installment contract premiums for insurance policies obtained after the date of

the retail installment transaction for coverages of the types allowed under Sections 353.201, 353.202, and 353.207, including premiums for the renewal of a policy included in the contract.

(b) A policy of insurance described by Subsection (a) must comply with the requirements of Sections 353.201, 353.202, 353.203, and 353.207, as applicable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.211. EFFECT OF ADDING PREMIUM TO CONTRACT. If a premium is added to the unpaid balance of a retail installment contract under Section 353.206 or 353.210, the rate applicable to the time price differential agreed to in the retail installment contract remains in effect and shall be applied to the new unpaid balance, or the contract may be rescheduled in accordance with Sections 353.114 and 353.115, without reclassifying the commercial vehicle by its year model at the time of the amendment.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.212. FINANCING ENTITY MAY NOT REQUIRE INSURANCE FROM PARTICULAR SOURCE. If a retail installment contract presented to a financing entity for acceptance includes any insurance coverage, the financing entity may not directly or indirectly require, as a condition of its agreement to finance the commercial vehicle, that the retail buyer purchase the insurance coverage from a particular source.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

SUBCHAPTER D. ACQUISITION OF CONTRACT OR BALANCE

Sec. 353.301. AUTHORITY TO ACQUIRE. A person may acquire a retail installment contract or an outstanding balance under a contract from another person on the terms, including the price, to which they agree. Notwithstanding any other law of this state, a

person acquiring or assigning a retail installment contract, or any balance under a contract, does not have a duty to disclose to any other person the terms on which a contract or balance under a contract is acquired or assigned, including the consideration for the acquisition or assignment and any discount or difference between the rates, charges, or balance under the contract and the consideration rates, charges, or balance acquired or assigned, as applicable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.302. LACK OF NOTICE DOES NOT AFFECT VALIDITY AS TO CERTAIN CREDITORS. Notice to a retail buyer of an assignment or negotiation of a retail installment contract or an outstanding balance under the contract or a requirement that the retail seller be deprived of dominion over payments on a retail installment contract or over the commercial vehicle if returned to or repossessed by the retail seller is not necessary for a written assignment or negotiation of the contract or balance to be valid as against a creditor, subsequent purchaser, pledgee, mortgagee, or lien claimant of the retail seller.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.303. PAYMENT BY BUYER. Unless a retail buyer has notice of the assignment or negotiation of the buyer's retail installment contract or an outstanding balance under the contract, a payment by the buyer to the most recent holder known to the buyer is binding on all subsequent holders.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

SUBCHAPTER E. HOLDER'S RIGHTS, DUTIES, AND LIMITATIONS

Sec. 353.401. SELLER'S PROMISE TO PAY OR TENDER OF CASH TO BUYER AS PART OF TRANSACTION. A retail seller may not promise to pay, pay, or otherwise tender cash to a retail buyer as a part of a

transaction under this chapter unless specifically authorized by this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.402. SELLER'S ACTION FOR INCENTIVE PROGRAM OR TO PAY FOR BUYER'S MOTOR VEHICLE. (a) A retail seller may pay, promise to pay, or tender cash or another thing of value to the manufacturer, distributor, or retail buyer of the product if the payment, promise, or tender is made in order to participate in a financial incentive program offered by the manufacturer or distributor of the vehicle to the buyer.

(b) A retail seller, in connection with a retail installment transaction, may:

(1) advance money to retire:

(A) an amount owed against a motor vehicle used as a trade-in or a motor vehicle owned by the buyer that has been declared a total loss by the buyer's insurer; or

(B) the retail buyer's outstanding obligation under a motor vehicle lease contract, a credit transaction for the purchase of a motor vehicle, or another retail installment transaction; and

(2) finance repayment of that money in a retail installment contract.

(c) A retail seller may pay in cash to the retail buyer any portion of the net cash value of a motor vehicle owned by the buyer and used as a trade-in in a transaction involving the sale of a commercial vehicle. In this subsection, "net cash value" means the cash value of a motor vehicle after payment of all amounts secured by the motor vehicle.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.403. STATEMENT OF PAYMENTS AND AMOUNT DUE UNDER CONTRACT. (a) On written request of a retail buyer, the holder of a retail installment contract shall give or send to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under the contract.

(b) A retail buyer is entitled to one statement during a six-month period without charge. The charge for each additional requested statement may not exceed $1.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.404. RECEIPT FOR CASH PAYMENT. A holder of a retail installment contract shall give the retail buyer a written receipt for each cash payment.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.405. OUTSTANDING BALANCE INFORMATION; PAYMENT IN FULL. (a) The holder of a retail installment contract who gives the retail buyer or the buyer's designee outstanding balance information relating to the contract is bound by that information and shall honor that information for a reasonable time.

(b) If the retail buyer or the buyer's designee tenders to the holder as payment in full an amount derived from that outstanding balance information, the holder shall:

(1) accept the amount as payment in full; and

(2) release the holder's lien against the commercial vehicle within a reasonable time not later than the 10th day after the date on which the amount is tendered.

(c) A retail seller must pay in full the outstanding balance of a vehicle traded in to the retail seller as part of the retail installment transaction not later than the 25th day after the date that:

(1) the retail installment contract is signed by the retail buyer and the retail buyer receives delivery of the commercial vehicle; and

(2) the retail seller receives delivery of the motor vehicle traded in and the necessary and appropriate documents to transfer title from the buyer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.406. LIABILITY RELATING TO OUTSTANDING BALANCE INFORMATION. A holder who violates Section 353.405 is liable to the retail buyer or the buyer's designee in an amount computed by adding:

(1) three times the difference between the amount tendered and the amount sought by the holder at the time of tender;

(2) interest;

(3) reasonable attorney's fees; and

(4) costs.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.407. PROHIBITION ON POWER OF ATTORNEY TO CONFESS JUDGMENT OR ASSIGNMENT OF WAGES. A retail installment contract may not contain:

(1) a power of attorney to confess judgment in this state; or

(2) an assignment of wages.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.408. PROHIBITION ON CERTAIN ACTS OF REPOSSESSION. A retail installment contract may not:

(1) authorize the holder or a person acting on the holder's behalf to:

(A) enter the retail buyer's premises in violation of Chapter 9, Business & Commerce Code; or

(B) commit a breach of the peace in the repossession of the commercial vehicle; or

(2) contain, or provide for the execution of, a power of attorney by the retail buyer appointing, as the buyer's agent in the repossession of the vehicle, the holder or a person acting on the holder's behalf.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.409. BUYER'S WAIVER. (a) A retail installment contract may not:

(1) provide for a waiver of the retail buyer's rights of action against the holder or a person acting on the holder's behalf for an illegal act committed in:

(A) the collection of payments under the contract; or

(B) the repossession of the commercial vehicle; or

(2) provide that the retail buyer agrees not to assert against the holder a claim or defense arising out of the sale.

(b) An act or agreement of the retail buyer before or at the time of the making of a retail installment contract or a purchase under the contract does not waive any provision of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.410. TRANSFER OF EQUITY. (a) With the written consent of the holder, a retail buyer may transfer at any time the buyer's equity in the commercial vehicle subject to the retail installment contract to another person.

(b) The holder may charge for the transfer of equity an amount that does not exceed:

(1) $25 for a commercial vehicle that is not a heavy commercial vehicle; or

(2) $50 for a heavy commercial vehicle.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

SUBCHAPTER F. LICENSING; ADMINISTRATION OF CHAPTER

Sec. 353.501. LICENSE REQUIRED. (a) A person may not act as a holder under this chapter unless the person:

(1) is an authorized lender or a credit union; or

(2) holds a license issued under Chapter 348 or this chapter.

(b) A person who is required to hold a license under this chapter must ensure that each office at which retail installment

transactions are made, serviced, held, or collected under this chapter is licensed or otherwise authorized to make, service, hold, or collect retail installment transactions in accordance with this chapter and rules implementing this chapter.

(c) A person may not use any device, subterfuge, or pretense to evade the application of this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.502. APPLICATION REQUIREMENTS. (a) The application for a license under this chapter must:

(1) be under oath;

(2) identify the applicant's principal parties in interest; and

(3) contain other relevant information that the commissioner requires.

(b) On the filing of a license application, the applicant shall pay to the commissioner:

(1) an investigation fee not to exceed $200; and

(2) a license fee in an amount determined as provided by Section 14.107.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 56, eff. September 1, 2019.

Sec. 353.503. INVESTIGATION OF APPLICATION. On the filing of an application and payment of the required fees, the commissioner shall conduct an investigation to determine whether to issue the license.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.504. APPROVAL OR DENIAL OF APPLICATION. (a) The

commissioner shall approve the application and issue to the applicant a license under this chapter if the commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to:

(1) command the confidence of the public; and

(2) warrant the belief that the business will be operated lawfully and fairly, within the purposes of this chapter.

(b) If the commissioner does not find the eligibility requirements of Subsection (a), the commissioner shall notify the applicant.

(c) If an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (b), the applicant is entitled to a hearing not later than the 60th day after the date of the request.

(d) The commissioner shall approve or deny the application not later than the 60th day after the date of the filing of a completed application with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. The commissioner and the applicant may agree to a later date in writing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.505. DISPOSITION OF FEES ON DENIAL OF APPLICATION. If the commissioner denies the application, the commissioner shall retain the investigation fee and shall return to the applicant the license fee submitted with the application.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.5055. LICENSE TERM. A license issued under this chapter is valid for the period prescribed by finance commission rule adopted under Section 14.112.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 57, eff. September 1, 2019.

Sec. 353.506. LICENSE FEE. Not later than the 30th day before the date the license expires, a license holder shall pay to the commissioner for each license held a fee in an amount determined as provided by Section 14.107.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 58, eff. September 1, 2019.

Sec. 353.5065. GROUNDS FOR REFUSAL OF RENEWAL. The commissioner may refuse to renew the license of a person who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 59, eff. September 1, 2019.

Sec. 353.507. EXPIRATION OF LICENSE ON FAILURE TO PAY FEE. If the fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on that day.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 60, eff. September 1, 2019.

Sec. 353.508. LICENSE SUSPENSION OR REVOCATION. After notice and opportunity for a hearing, the commissioner may suspend or revoke a license if the commissioner finds that:

(1) the license holder failed to pay the license fee, an investigation fee, or another charge imposed by the commissioner;

(2) the license holder, knowingly or without the exercise of due care, violated this chapter or a rule adopted or order issued under this chapter; or

(3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 61, eff. September 1, 2019.

Sec. 353.509. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE OF NEW LICENSE AFTER REVOCATION. The commissioner may reinstate a suspended license or issue a new license on application to a person whose license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the commissioner's denial of an original application for the license.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.510. SURRENDER OF LICENSE. A license holder may surrender a license issued under this chapter by delivering to the commissioner:

(1) the license; and

(2) a written notice of the license's surrender.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.511. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR SURRENDER. (a) The suspension, revocation, or surrender of a license issued under this chapter does not affect the obligation of a contract between the license holder and a retail buyer entered into before the suspension, revocation, or surrender.

(b) Surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.512. TRANSFER OR ASSIGNMENT OF LICENSE. A license may be transferred or assigned only with the approval of the commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.513. ADOPTION OF RULES. (a) The finance commission may adopt rules to enforce this chapter.

(b) The commissioner shall recommend proposed rules to the finance commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.514. GENERAL INVESTIGATION. To discover a violation of this chapter or to obtain information required under this chapter, the commissioner or the commissioner's representative may investigate the records, including books, accounts, papers, and correspondence, of a person, including a license holder, who the commissioner has reasonable cause to believe is violating this chapter, regardless of whether the person claims to not be subject to this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

Sec. 353.515. SHARING OF INFORMATION. To ensure consistent enforcement of law and minimization of regulatory burdens, the commissioner and the Texas Department of Motor Vehicles may share information, including criminal history information, relating to a person licensed under this chapter. Information otherwise confidential remains confidential after it is shared under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 17, eff. September 1, 2011.

CHAPTER 354. DEBT CANCELLATION AGREEMENTS FOR CERTAIN RETAIL VEHICLE INSTALLMENT SALES

Sec. 354.001. DEFINITIONS. In this chapter:

(1) "Contract" means a retail installment contract made under Chapter 345 or 348.

(2) "Covered vehicle" includes a self-propelled or towed vehicle designed for personal use, including an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, snowmobile, camper, boat, personal watercraft, and personal watercraft trailer.

(3) "Debt cancellation agreement" means a contract term or a contractual arrangement modifying a contract term under which a retail seller or holder agrees to cancel all or part of an obligation of the retail buyer to repay an extension of credit from the retail seller or holder on the occurrence of the total loss or theft of the covered vehicle that is the subject of the contract but does not include an offer to pay a specified amount on the total loss or theft of the covered vehicle.

(4) "Holder" means a person who is:

(A) a retail seller; or

(B) the assignee or transferee of a contract.

(5) "Retail buyer" means a person who purchases or agrees to purchase a covered vehicle from a retail seller in a retail installment transaction.

(6) "Retail seller" means a person in the business of selling covered vehicles to retail buyers in retail installment transactions.

Redesignated and amended from Finance Code, Subchapter G, Chapter 348 by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 6, eff. September 1, 2017.

Sec. 354.002. LIMITATION ON CERTAIN DEBT CANCELLATION AGREEMENTS. (a) This chapter applies only to a debt cancellation agreement that includes insurance coverage as part of the retail buyer's responsibility to the holder.

(b) The amount charged for a debt cancellation agreement made in connection with a contract may not exceed five percent of the amount financed pursuant to the contract. Section 348.124(c) does not apply to a debt cancellation agreement regulated under this chapter.

(c) The debt cancellation agreement becomes a part of or a separate addendum to the contract and remains a term of the contract on the assignment, sale, or transfer by the holder.

(d) A debt cancellation agreement to which this chapter applies is not insurance.

Redesignated and amended from Finance Code, Subchapter G, Chapter 348 by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 6, eff. September 1, 2017.

Sec. 354.003. DEBT CANCELLATION AGREEMENTS EXCLUSION LANGUAGE. (a) In addition to the provisions required by Section 354.004, a debt cancellation agreement must fully disclose all provisions permitting the exclusion of loss or damage including, if applicable:

(1) an act occurring after the original maturity date or date of the holder's acceleration of the contract;

(2) any dishonest, fraudulent, illegal, or intentional act of any authorized driver that directly results in the total loss of the covered vehicle;

(3) any act of gross negligence by an authorized driver that directly results in the total loss of the covered vehicle;

(4) conversion, embezzlement, or concealment by any person in lawful possession of the covered vehicle;

(5) lawful confiscation by an authorized public official;

(6) the operation, use, or maintenance of the covered vehicle in any race or speed contest;

(7) war, whether or not declared, invasion, insurrection, rebellion, revolution, or an act of terrorism;

(8) normal wear and tear, freezing, or mechanical or electrical breakdown or failure;

(9) use of the covered vehicle for primarily commercial purposes;

(10) damage that occurs after the covered vehicle has been repossessed;

(11) damage to the covered vehicle before the purchase of the debt cancellation agreement;

(12) unpaid insurance premiums and salvage, towing, and storage charges relating to the covered vehicle;

(13) damage related to any personal property attached to or within the covered vehicle;

(14) damages associated with falsification of documents by any person not associated with the retail seller or other person canceling the retail buyer's obligation;

(15) any unpaid debt resulting from exclusions in the retail buyer's primary physical damage coverage not included in the debt cancellation agreement;

(16) abandonment of the covered vehicle by the retail buyer only if the retail buyer voluntarily discards, leaves behind, or otherwise relinquishes possession of the covered vehicle to the extent that the relinquishment shows intent to forsake and desert the covered vehicle so that the covered vehicle may be appropriated by any other person;

(17) any amounts deducted from the primary insurance carrier's settlement due to prior damages; and

(18) any loss occurring outside the United States or outside the United States and Canada.

(b) An exclusion of loss or damage not listed in Subsection (a) may be included in a debt cancellation agreement only if the exclusion is disclosed in plain, easy to read language.

Redesignated and amended from Finance Code, Subchapter G, Chapter 348 by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 6, eff. September 1, 2017.

Sec. 354.004. REQUIRED DEBT CANCELLATION AGREEMENT LANGUAGE. A debt cancellation agreement must state:

(1) the contact information of the retail seller, the holder, and any administrator of the agreement;

(2) the name and address of the retail buyer;

(3) the cost and term of the debt cancellation agreement;

(4) the procedure the retail buyer must follow to obtain benefits under the terms of the debt cancellation agreement, including a telephone number and address where the retail buyer may

provide notice under the debt cancellation agreement;

(5) the period during which the retail buyer is required to notify the retail seller, the holder, or any administrator of the agreement of any potential loss under the debt cancellation agreement for total loss or theft of the covered vehicle;

(6) that in order to make a claim, the retail buyer must provide or complete some or all of the following documents and provide those documents to the retail seller, the holder, or any administrator of the agreement:

(A) a debt cancellation request form;

(B) proof of loss and settlement payment from the retail buyer's primary comprehensive, collision, or uninsured or underinsured motorist policy or other parties' liability insurance policy for the settlement of the insured total loss of the covered vehicle;

(C) verification of the retail buyer's primary insurance deductible;

(D) a copy of any police report filed in connection with the total loss or theft of the covered vehicle; and

(E) a copy of the damage estimate;

(7) that documentation not described by Subdivision (6) or required by the retail seller, the holder, or any administrator of the agreement is not required to substantiate the loss or determine the amount of debt to be canceled;

(8) that notwithstanding the collection of the documents under Subdivision (6), on reasonable advance notice the retail seller, the holder, or any administrator of the agreement may inspect the retail buyer's covered vehicle;

(9) that the retail seller or holder will cancel all or part of the retail buyer's obligation as provided in the debt cancellation agreement on the occurrence of total loss or theft of the covered vehicle;

(10) the method to be used to calculate refunds;

(11) the method for calculating the amount to be canceled under the debt cancellation agreement on the occurrence of total loss or theft of a covered vehicle;

(12) that purchase of a debt cancellation agreement is not required for the retail buyer to obtain an extension of credit and will not be a factor in the credit approval process;

(13) that in order to cancel the debt cancellation

agreement and receive a refund, the retail buyer must provide a written request to cancel to the retail seller, the holder, or any administrator of the agreement;

(14) that if total loss or theft of the covered vehicle has not occurred, the retail buyer has 30 days from the date of the contract or the issuance of the debt cancellation agreement, whichever is later, or a longer period as provided under the debt cancellation agreement, to cancel the debt cancellation agreement and receive a full refund;

(15) that the retail buyer may file a complaint with the commissioner, and include the address, phone number, and Internet website of the Office of Consumer Credit Commissioner; and

(16) that the holder will cancel certain amounts under the debt cancellation agreement for total loss or theft of a covered vehicle, in the following or substantially similar language: "YOU WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT OF THE COVERED VEHICLE AS STATED IN THE DEBT CANCELLATION AGREEMENT."

Redesignated and amended from Finance Code, Subchapter G, Chapter 348 by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 6, eff. September 1, 2017.

Sec. 354.005. APPROVAL OF FORMS FOR DEBT CANCELLATION AGREEMENTS. (a) Debt cancellation agreement forms must be submitted to the commissioner for approval. Debt cancellation agreement forms may include additional language to supplement the terms of the debt cancellation agreement as required by this chapter.

(b) If a debt cancellation agreement form is provided to the commissioner for approval, the commissioner has 45 days to approve the form or deny approval of the form. On the written request of the person submitting the form, the commissioner may agree in writing to extend the approval period for an additional 45 days. If after the 45th day, or the 90th day if the commissioner agrees to an extension, the commissioner does not deny the form, the form is considered approved.

(c) If the debt cancellation agreement form is approved by the commissioner or considered approved as provided by Subsection (b), the terms of the debt cancellation agreement are considered to be in

compliance with this chapter.

(d) The commissioner may deny approval of a form only if the form excludes the language required by Sections 354.003 and 354.004 or contains any inconsistent or misleading provisions. All form denials, after an opportunity for a hearing under Chapter 2001, Government Code, may be appealed to a district court in accordance with that chapter.

(e) If after approval of a form the Office of Consumer Credit Commissioner discovers that approval could have been denied under Subsection (d), the commissioner may order a retail seller, any administrator of the debt cancellation agreement, or a holder to submit a corrected form for approval. Beginning as soon as reasonably practicable after approval of the corrected form, the retail seller, administrator, or holder shall use the corrected form for all sales.

(f) A debt cancellation agreement form that has been approved by the commissioner is public information subject to disclosure under Chapter 552, Government Code. Section 552.110, Government Code, does not apply to a form approved under this chapter.

Redesignated and amended from Finance Code, Subchapter G, Chapter 348 by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 6, eff. September 1, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 62, eff. September 1, 2019.

Sec. 354.006. ADDITIONAL REQUIREMENTS FOR DEBT CANCELLATION AGREEMENTS. (a) If a retail buyer purchases a debt cancellation agreement, the retail seller must provide to the retail buyer a true and correct copy of the agreement not later than the 10th day after the date of the contract.

(b) A holder must comply with the terms of a debt cancellation agreement not later than the 60th day after the date of receipt of all necessary information required by the holder or administrator of the agreement to process the request.

(c) A debt cancellation agreement may not knowingly be offered by a retail seller if:

(1) the contract is already protected by gap insurance; or

(2) the purchase of the debt cancellation agreement is required for the retail buyer to obtain the extension of credit.

(d) This section does not apply to a debt cancellation agreement offered in connection with the purchase of a commercial vehicle.

(e) The sale of a debt cancellation agreement must be for a single payment.

(f) A holder that offers a debt cancellation agreement must report the sale of and forward money received on all such agreements to any designated party as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.

(g) Money received or held by a holder or any administrator of a debt cancellation agreement and belonging to an insurance company, holder, or administrator under the terms of a written agreement must be held by the holder or administrator in a fiduciary capacity.

(h) A retail seller that negotiates a debt cancellation agreement and subsequently assigns the contract shall:

(1) maintain documents relating to the agreement that come into the retail seller's possession; and

(2) on request of the Office of Consumer Credit Commissioner, cooperate in requesting and obtaining access to documents relating to the agreement not in the retail seller's possession.

Redesignated and amended from Finance Code, Subchapter G, Chapter 348 by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 6, eff. September 1, 2017.

Sec. 354.007. REFUND FOR DEBT CANCELLATION AGREEMENTS. (a) A refund or credit of the debt cancellation agreement fee must be based on the earliest date of:

(1) the prepayment of the contract in full before the original maturity date;

(2) a demand by the holder for payment in full of the unpaid balance or acceleration;

(3) a request by the retail buyer for cancellation of the debt cancellation agreement; or

(4) the total denial of a debt cancellation request based

on one of the exclusions listed in Section 354.003, except in the case of a partial loss of the covered vehicle.

(b) The refund or credit for the debt cancellation agreement can be rounded to the nearest whole dollar. A refund or credit is not required if the amount of the refund or credit calculated is less than $5.

(c) If total loss or theft has not occurred, the retail buyer may cancel the debt cancellation agreement not later than the 30th day after the date of the contract or the issuance of the debt cancellation agreement, whichever is later, or a later date as provided under the debt cancellation agreement. On cancellation, the holder or any administrator of the agreement shall refund or credit the entire debt cancellation agreement fee. A retail buyer may not cancel the debt cancellation agreement and subsequently receive any benefits under the agreement.

(d) A holder may in good faith rely on a computation by any administrator of the agreement of the balance waived, unless the holder has knowledge that the computation is not correct. If a computation by the administrator of the balance waived is not correct, the holder must within a reasonable time of learning that the computation is incorrect make the necessary corrections or cause the corrections to be made to the retail buyer's account. This subsection does not prevent the holder from obtaining reimbursement from the administrator or another responsible for the debt cancellation agreement or computation.

(e) If the debt cancellation agreement terminates due to the early termination of the contract, the holder shall, not later than the 60th day after the date the debt cancellation agreement terminates:

(1) refund or credit an appropriate amount of the debt cancellation agreement fee; or

(2) cause to be refunded or credited an appropriate amount of the debt cancellation agreement fee by providing written instruction to the appropriate person.

(f) The holder shall ensure that a refund or credit of an amount of a debt cancellation agreement fee made by another person under Subsection (e)(2) is made not later than the 60th day after the date the debt cancellation agreement terminates.

(g) The holder shall maintain records of any refund or credit of an amount of a debt cancellation agreement fee made under

Subsection (e) and provide electronic access to those records until the later of the fourth anniversary of the date of the contract or the second anniversary of the date of the refund or credit.

Redesignated and amended from Finance Code, Subchapter G, Chapter 348 by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 6, eff. September 1, 2017.

SUBTITLE C. PAWNSHOPS
CHAPTER 371. PAWNSHOPS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 371.001. SHORT TITLE. This chapter shall be known and may be cited as the "Texas Pawnshop Act."

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.002. PURPOSES. The purposes of this chapter are to:

(1) prevent fraud, unfair practices, discrimination, imposition, and abuse of state residents;

(2) exercise the state's police power to ensure a sound system of making pawn loans and transfers of personal property by and through pawnshops;

(3) prevent transactions in stolen property and other unlawful property transactions by licensing and regulating pawnbrokers;

(4) provide for licensing and investigation fees;

(5) provide minimum capital requirements for pawnbrokers;

(6) ensure financial responsibility to the state and its residents and compliance with federal, state, and local law, including rules and ordinances; and

(7) assist local governments in the exercise of their police power.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 63, eff. September 1, 2019.

Sec. 371.003. DEFINITIONS. In this chapter:

(1) "Applicable liabilities" include trade or other accounts payable; accrued sales, income, or other taxes; accrued expenses; and notes or other payables that are unsecured or secured in whole or part by current assets. The term does not include a liability secured by assets other than current assets.

(2) "Commissioner" means the consumer credit commissioner.

(3) "Current assets" include an investment made in cash, bank deposits, merchandise inventory, and loans due from customers, excluding the pawn service charge. The term does not include an investment made in:

(A) fixed assets of real estate, furniture, fixtures, or equipment;

(B) stocks, bonds, or other securities; or

(C) prepaid expenses or other general intangibles.

(4) "Goods" means tangible personal property.

(5) "Net assets" means the book value of current assets less applicable liabilities.

(6) "Pawnbroker" means a person engaged in the business of:

(A) lending money on the security of pledged goods; or

(B) purchasing goods on condition that the goods may be redeemed or repurchased by the seller for a fixed price within a fixed period.

(7) "Pawnshop" means a location at which or premises in which a pawnbroker regularly conducts business.

(8) "Pawn transaction" means the pledging, by a person present in this state at the time of the transaction, with a pawnbroker of a single item of goods as security for a loan of money.

(9) "Pledged goods" means goods deposited with or otherwise delivered into the possession of a pawnbroker in connection with a pawn transaction.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 64, eff. September 1, 2019.

Sec. 371.004. COMPUTATION OF MONTH. (a) For the computation of time in this chapter, a month is the period from a date in a month

to the corresponding date in the succeeding month. If the succeeding month does not have a corresponding date, the period ends on the last day of the succeeding month.

(b) For the computation of a fraction of a month, a day is equal to one-thirtieth of a month.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.005. REGULATORY AUTHORITY. The legislature has exclusive authority regarding the operation of pawnshops, except for a matter delegated by this chapter to the commissioner. The commissioner has the authority to regulate only a business practice that requires a pawnshop license.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 801, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.006. RULEMAKING. (a) The Finance Commission of Texas may adopt rules to enforce this chapter.

(b) A rule shall be entered in a permanent record book. The book is a public record and shall be kept in the office of the commissioner.

(c) A copy of a rule shall be mailed to each license holder, and the rule may not take effect before the 21st day after the earliest date on which all of the copies have been mailed.

(d) On application by any person and on payment of any associated cost, the commissioner shall furnish the person a certified copy of a rule adopted by the Finance Commission of Texas.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 801, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 867, Sec. 99, eff. Sept. 1, 2001.

Sec. 371.007. STAGGERED RENEWAL OF LICENSES. (a) The Finance Commission of Texas by rule may adopt a system under which licenses issued under this chapter expire on various dates during the year.

(b) For a year in which an expiration date is changed, a license fee payable on the date of issuance shall be prorated

according to the number of months during which the license is valid.

(c) On renewal of a license on the new expiration date, the total license fee is payable.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 100, eff. Sept. 1, 2001.

SUBCHAPTER B. PAWNSHOP LICENSE

Sec. 371.051. PAWNSHOP LICENSE REQUIRED. A person may not engage in business as a pawnbroker unless the person holds a pawnshop license.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.052. ELIGIBILITY. (a) To be eligible for a pawnshop license, an applicant must:

(1) meet the net assets requirement of Section 371.072; and

(2) show that:

(A) the pawnshop will be operated lawfully and fairly under this chapter; and

(B) the applicant or the applicant's owners and managers have the financial responsibility, experience, character, and general fitness to command the confidence of the public in the pawnshop's operations.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 95(2), eff. September 1, 2019.

(c) For purposes of a disqualification under Chapter 53, Occupations Code, the commissioner is a licensing authority.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.748, eff. Sept. 1, 2001. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 65, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 95(2), eff. September 1, 2019.

Sec. 371.053. VERIFICATION OF APPLICANT'S NET ASSETS. If the commissioner cannot verify that an applicant meets the net assets requirement of Section 371.072, the commissioner may require a finding, including a current balance sheet, by an independent certified public accountant that:

(1) the accountant has reviewed the applicant's books and records; and

(2) the applicant meets the net assets requirement.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.054. LICENSE APPLICATION. (a) This section applies to an application for:

(1) an original pawnshop license;

(2) relocation of a pawnshop; or

(3) transfer of a pawnshop license and approval of a change in the ownership of a pawnshop.

(b) An application must be made to the commissioner and must:

(1) be under oath;

(2) state:

(A) the full name and place of residence of the applicant;

(B) the full name and address of each member if the applicant is a partnership;

(C) except as provided by Subsection (c), the full name and address of each officer, shareholder, and director if the applicant is a corporation;

(D) the location where the business is to be conducted; and

(E) other relevant information required by the commissioner; and

(3) be accompanied by the fees and proof of insurance required by Section 371.055.

(c) The full name and address of each shareholder is not required if the applicant is owned directly or beneficially by a person who:

(1) is an issuer of securities who:

(A) has a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. Section 78l);

or

(B) is required to file reports with the Securities and Exchange Commission by Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(d)); and

(2) has filed with the commissioner the information, documents, and reports required by the Securities Exchange Act of 1934 (15 U.S.C. Section 77b et seq.) to be filed by the issuer with the Securities and Exchange Commission.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.055. FEES; PROOF OF INSURANCE. An applicant must submit with the application:

(1) an investigation fee of:

(A) $500 if the applicant does not hold a license; or

(B) $250 if the application:

(i) is for an additional license for a separate location; or

(ii) involves substantially identical principals and owners of a licensed pawnshop at a separate location;

(2) a fee in an amount determined as provided by Section 14.107; and

(3) proof of general liability and fire insurance in a reasonable amount and form required by the commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1235, Sec. 20, eff. Sept. 1, 2001. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 66, eff. September 1, 2019.

Sec. 371.056. BOND. (a) The commissioner may require that an applicant file a bond with the application. The bond must be:

(1) satisfactory to the commissioner;

(2) in the amount set by the commissioner not to exceed $5,000 for each license; and

(3) issued by a surety qualified to do business in this state.

(b) The aggregate liability of the surety may not exceed the

amount of the bond.

(c) The bond must be in favor of this state for the use of this state and the use of a person who has a cause of action under this chapter against the pawnbroker.

(d) The bond must be conditioned on:

(1) the pawnbroker's compliance with this chapter and rules adopted under this chapter; and

(2) the payment of all amounts that become due to this state or to another person under this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.057. INVESTIGATION; NOTICE OF APPLICATION. (a) On receipt of an application and the required fees, the commissioner shall:

(1) conduct an investigation to determine whether to issue the license; and

(2) give notice of the application to:

(A) the Department of Public Safety of the State of Texas;

(B) each local law enforcement agency in the county in which the business is to be conducted; and

(C) each pawnbroker in the county in which the applicant pawnshop is to be located.

(b) The notice to the department of public safety and local law enforcement agencies must state the name and address of each person required by Section 371.054 to be listed on the license application.

(c) The commissioner shall give the department and local law enforcement agencies a reasonable time to respond with information concerning the listed persons or with any other relevant information.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.058. PUBLIC HEARING. (a) On request, the commissioner shall conduct a public hearing before issuing a pawnshop license.

(b) The commissioner shall give a pawnbroker that would be affected by the granting of an application for a pawnshop license an opportunity to appear, present evidence, and be heard for or against

the application.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.059. APPROVAL; ISSUANCE OF LICENSE. (a) Subject to Subsection (b), the commissioner shall approve the application and issue a license if the commissioner finds that the applicant is eligible for the license.

(b) In a county with a population of 250,000 or more, the commissioner shall approve an application for:

(1) an original license to operate a pawnshop at a facility that is not an existing licensed pawnshop at the time the application is filed if the proposed facility is not located within two miles of a licensed pawnshop;

(2) the relocation of a licensed pawnshop to a facility that is not an existing licensed pawnshop at the time the application is filed if the facility where the pawnshop is to be relocated is not located within one mile of a licensed pawnshop; and

(3) the relocation of a licensed pawnshop if at the time the application is filed the pawnshop has been in operation at its current location for at least three years, and the facility where the pawnshop is to be relocated is either within one mile of its existing location or, if in excess of one mile from its existing location, not within one mile of another existing operating pawnshop.

(c) Notwithstanding Subsection (b)(3), the commissioner may approve an application for the relocation of a licensed pawnshop that needs to relocate marginally further than one mile from its existing location or that at the time the application is made has not been in operation in its current location for at least three years if the necessity for relocation was caused by circumstances beyond the applicant's control.

(d) A determination of distance for purposes of this section is based on a measurement taken from the front door of a facility to the front door of the other facility. For a facility not in existence at the time the application is filed, the location of the front door of the proposed facility must be indicated on architectural drawings or comparable professionally prepared drawings depicting the facility and the entire boundary of the lot or parcel of land to which the facility is to be attached.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1399, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.060. NOTICE OF DENIAL; HEARING. (a) If the commissioner does not make a finding described by Section 371.059, the commissioner shall notify the applicant.

(b) An applicant who requests a hearing on the application not later than the 30th day after the date of notification under Subsection (a) is entitled to a hearing within 60 days after the date of the request.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.061. PERIOD FOR FINAL DECISION TO APPROVE OR DENY. Unless the applicant and the commissioner agree in writing to a later date, the commissioner shall approve or deny the application before the 61st day after the later of the date on which:

(1) the application is filed and the required fees are paid; or

(2) a hearing on the application is completed.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.062. DISPOSITION OF FEES ON DENIAL OF APPLICATION. If the commissioner denies the application, the commissioner shall retain the investigation fee and shall return to the applicant the license fee submitted with the application.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 67, eff. September 1, 2019.

Sec. 371.0625. LICENSE TERM. A license issued under this subchapter is valid for the period prescribed by finance commission rule adopted under Section 14.112.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 68, eff. September 1, 2019.

Sec. 371.063. LICENSE ISSUED BEFORE OCTOBER 1, 1981. A license issued to a pawnshop before October 1, 1981, remains valid as long as the pawnbroker complies with this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.064. LICENSE FEE; EXPIRATION. (a) Not later than the 30th day before the date the license expires, a pawnbroker shall pay to the commissioner for each license held a fee in an amount determined as provided by Section 14.107.

(b) If the fee for a license is not paid before the 16th day after the date on which written notice of delinquency of payment has been given to the pawnbroker by the commissioner, the license expires on that day.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1399, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1235, Sec. 21, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 69, eff. September 1, 2019.

Sec. 371.0645. GROUNDS FOR REFUSAL TO RENEW. The commissioner may refuse to renew the license of a person who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 70, eff. September 1, 2019.

Sec. 371.066. TEMPORARY LICENSE. (a) The commissioner may issue a temporary pawnshop license on receipt of an application:

(1) to transfer a license from one person to another; or

(2) for a license involving principals and owners that are substantially identical to those of a pawnshop in operation at the

time of receipt of the application.

(b) A temporary license is effective until a permanent license is issued or denied.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 801, Sec. 3, eff. Sept. 1, 1999.

Sec. 371.067. CONTENTS AND DISPLAY OF LICENSE. (a) A license must state:

(1) the name of the pawnbroker; and

(2) the address at which the business is to be conducted.

(b) A pawnbroker shall display a license at the place of business provided on the license.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.068. MULTIPLE PLACES OF BUSINESS. (a) A separate pawnshop license is required for each place of business operated under this chapter.

(b) The commissioner may issue more than one license to a person if the person complies with this chapter for each license.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.069. CHANGE OF OWNERSHIP. (a) An application for an original pawnshop license or the transfer of a pawnshop license is required if a change in direct or beneficial ownership of a licensed pawnshop occurs.

(b) This section does not apply to a change in direct or beneficial ownership of a licensed pawnshop if the pawnshop is owned directly or beneficially by a person who:

(1) is an issuer of securities who is described by Section 371.054(c)(1);

(2) is described by Section 371.054(c)(2) and has submitted to the commissioner each filing required by Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(d)) and paid a filing fee of $100 with each; and

(3) has filed information on officers and directors of the

issuer or any licensed or intermediate subsidiary as required by Section 371.054 for officers and directors of a corporation.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.070. TRANSFER OR ASSIGNMENT OF LICENSE. A pawnshop license may be transferred or assigned only with the approval of the commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.071. APPLICATION FOR RELOCATION. A pawnbroker who wishes to move a pawnshop from the location provided on the license must make application to the commissioner before the 30th day preceding the date the pawnbroker moves.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1399, Sec. 3, eff. Sept. 1, 1999.

Sec. 371.072. NET ASSETS REQUIREMENT. (a) Except as provided by Subsection (b), a pawnbroker shall maintain net assets of at least $150,000 that are used or readily available for use in the business of each pawnshop.

(b) A pawnbroker who held a license under this chapter before September 1, 1999, shall maintain net assets that are used or readily available for use in the business for that existing license of at least the amount required on August 31, 1999. The net assets requirement of this subsection remains in effect without regard to a change in ownership or relocation of the license.

(c) Net assets must be represented by a capital investment unencumbered by a lien or other encumbrance and subject to a claim by a general creditor.

Text of subsec. (d) as amended by Acts 1999, 76th Leg., ch. 801, Sec. 4

(d) Subject to Subsection (b), a pawnbroker shall maintain for each pawnshop net assets, as that term was defined at the time the license was issued, that are used or readily available for use in the business of the pawnshop of at least the amount required on:

(1) August 31, 1981, if the pawnbroker held a license on that date; or

(2) June 20, 1987, if the pawnbroker held a license on that date but did not hold a license on August 31, 1981.

Text of subsec. (d) as relettered from subsec. (f) and amended by Acts 1999, 76th Leg., ch. 1399, Sec. 4

(d) In this section, "capital investment" means:

(1) common or preferred shares and capital or earned surplus as those terms are defined by the Texas Business Corporation Act if the pawnbroker is a corporation; or

(2) a substantial equivalent of items described by Subdivision (1), as determined by generally accepted accounting principles, if the pawnbroker is not a corporation.

Text of subsec. (e) as amended by Acts 1999, 76th Leg., ch. 801, Sec. 4

(e) Subject to Subsection (d), net assets must be represented by a capital investment unencumbered by a lien or other encumbrance and subject to a claim by a general creditor.

Text of subsec. (e) as relettered from subsec. (g) and amended by Acts 1999, 76th Leg., ch. 1399, Sec. 4

(e) Subsection (b) applies to a change in ownership that is:

(1) a transaction involving a different owner who had a significant family or business relationship with a prior owner before the transaction;

(2) a transaction in which:

(A) only the number or proportionate ownership of owners of a business changes; and

(B) an individual who was not an owner before the transaction is not an owner after the transaction; or

(3) a change in ownership that occurs by testate or intestate disposition.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 801, Sec. 4, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1399, Sec. 4, eff. Sept. 1, 1999.

Sec. 371.073. APPOINTMENT OF AGENT. (a) A pawnbroker shall maintain on file with the commissioner a written appointment of a

resident of this state as the pawnbroker's agent for service of all judicial or other process or legal notice unless the pawnbroker has appointed an agent under another statute of this state.

(b) If a pawnbroker does not comply with this section, service of all judicial or other process or legal notice may be made on the commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.074. PAWNBROKER RESPONSIBLE FOR EMPLOYEES AND AGENTS. A license holder under this subchapter is responsible for all acts of the license holder's officers, directors, employees, and agents acting on behalf of the pawnshop.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 71, eff. September 1, 2019.

SUBCHAPTER C. PAWNSHOP EMPLOYEE LICENSE PROGRAM

Sec. 371.101. PAWNSHOP EMPLOYEE LICENSE PROGRAM. (a) A pawnbroker may, but is not required to, participate in the pawnshop employee license program by notifying the commissioner in writing on a form prescribed by the commissioner.

(a-1) A pawnbroker may submit a written notification to participate in the pawnshop employee license program under Subsection (a):

(1) at the time of the pawnbroker's original license application;

(2) at the time of a renewal of the pawnbroker's license; or

(3) at another time prescribed by the commissioner.

(a-2) A pawnbroker may notify the commissioner in writing of the pawnbroker's intention to no longer participate in the pawnshop employee license program at any time notification is permitted under Subsection (a-1). On receipt by the commissioner of a pawnbroker's notification under this subsection, the pawnbroker will no longer be a part of the pawnshop employee license program unless the pawnbroker resubmits a new notification for participation under Subsection (a-1).

(b) An individual who begins employment at a pawnshop for a

pawnbroker that participates in the pawnshop employee license program under Subsection (a), as a condition of employment, must apply to the commissioner for a pawnshop employee license not later than the 75th day after the date employment begins. The individual may continue employment until the license is issued or denied.

(c) If a pawnbroker participates in the pawnshop employee license program under Subsection (a), the participating pawnbroker may not employ an individual to write a pawn transaction, buy or sell merchandise, or supervise another employee who writes pawn transactions or buys or sells merchandise unless the individual:

(1) has complied with Subsection (b) but has not been issued or denied a license; or

(2) holds a pawnshop employee license.

(d) Subsection (c) does not apply to an individual who:

(1) has an ownership interest in the pawnshop license; and

(2) is named on the application.

(e) Subject to Section 14.112, the Finance Commission of Texas shall adopt rules to administer the pawnshop employee license program.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1399, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 73, eff. September 1, 2019.

Sec. 371.102. ELIGIBILITY. (a) To be eligible for a pawnshop employee license, an individual must:

(1) be of good business repute;

(2) possess the character and general fitness necessary to warrant belief that the individual will operate the business lawfully and fairly under this chapter; and

(3) be employed by a pawnbroker that participates in the pawnshop employee license program under Section 371.101.

(b) For purposes of a disqualification under Chapter 53, Occupations Code, the commissioner is a licensing authority.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.749, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 74, eff. September 1, 2019.

Sec. 371.103. LICENSE APPLICATION; FEES. (a) An application for a pawnshop employee license must state:

(1) the applicant's name and address;

(2) the name of the pawnshop at which the applicant is employed;

(3) whether the applicant has:

(A) been convicted of or is under indictment for a crime;

(B) had a license to engage in an occupation, business, or profession revoked or suspended; or

(C) been denied an occupational, business, or professional license, including a pawnshop employee license, in this or another state;

(4) if the applicant has had a license described by Subdivision (3)(B) revoked or suspended, the reason for the action;

(5) each business or occupation in which the applicant engaged for the five years preceding the date of application; and

(6) other relevant information the commissioner requires.

(b) The application must be accompanied by an investigation and annual fee in an amount determined as provided by Section 14.107.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 75, eff. September 1, 2019.

Sec. 371.104. APPROVAL OR DENIAL OF APPLICATION. (a) Not later than the 60th day after the date an application is filed, the commissioner shall determine whether the applicant qualifies for a pawnshop employee license.

(b) The commissioner shall approve the application and issue a license if the commissioner finds that the applicant qualifies for a license.

(c) If the commissioner does not make the finding required by Subsection (b), the commissioner in writing shall notify the

applicant and the employing pawnbroker that the application will be denied unless the applicant, in writing and not later than the 30th day after the date of the notice, requests a hearing on the application.

(d) An application is denied on the 31st day after the date of the notice if the applicant does not request a hearing in the time allowed.

(e) If an applicant requests a hearing in the time allowed, the commissioner shall conduct a hearing on the application. On the conclusion of the hearing, the commissioner shall approve or deny the application.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.105. LICENSE TERM. A pawnshop employee license is valid for the period prescribed by finance commission rule adopted under Section 14.112.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 76, eff. September 1, 2019.

Sec. 371.106. LICENSE FEE; EXPIRATION. (a) Not later than the 30th day before the date the license expires, a pawnshop employee license holder shall pay to the commissioner a fee in an amount determined as provided by Section 14.107.

(b) The commissioner shall send written notice of delinquency to a license holder who does not pay the fee on or before the 30th day before the date the license expires.

(c) If the fee for a license is not paid before the 16th day after the date of the delinquency notice, the license expires on that day.

(d) A pawnshop employee license expires on the 30th day after the last day of employment if the license holder:

(1) ceases to be employed by a pawnbroker that participates in the pawnshop employee license program under Section 371.101; and

(2) is not employed within that time by another pawnbroker that participates in the pawnshop employee license program.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1399, Sec. 6, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 77, eff. September 1, 2019.

Sec. 371.107. GROUNDS FOR REFUSAL TO RENEW. The commissioner may refuse to renew the pawnshop employee license of a person who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 78, eff. September 1, 2019.

SUBCHAPTER D. OPERATION OF PAWNSHOPS

Sec. 371.151. HOURS OF OPERATION. (a) A pawnbroker shall maintain normal business hours of at least four hours a day for five days a week.
(b) A pawnbroker may not do business before 7 a.m. or after 9 p.m.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.152. RECORDKEEPING. (a) A pawnbroker, consistent with accepted accounting practices, shall keep adequate books and records relating to the pawnbroker's pawn transactions and any other business regulated by this chapter.
(b) Books and records shall be preserved at least until the second anniversary of the date of the last transaction recorded.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.153. NOTICE OF OPERATION OF OTHER BUSINESS. (a) A pawnbroker shall notify the commissioner before the pawnbroker allows another person to conduct at the pawnshop a business other than the business of a pawnbroker or the business of buying and selling goods.
(b) The commissioner may refuse to permit a person other than

the pawnbroker to operate the other business on the pawnshop premises if the commissioner finds that the operation is inconsistent with this chapter.

(c) A pawnbroker shall notify the commissioner of any location at which the pawnbroker or an applicant for a pawnshop license operates a buy shop, secondhand merchandise store, retail outlet, or similar business or any business to which the pawnbroker regularly transfers goods from the pawnshop.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 801, Sec. 5, eff. Sept. 1, 1999.

Sec. 371.154. INSURANCE AND BOND. (a) A pawnbroker shall maintain general liability and fire insurance:

(1) in a reasonable amount and form required by the commissioner; and

(2) sufficient to protect pledged goods, including jewelry, at the pawnshop.

(b) A pawnbroker shall secure a bond:

(1) in the amount, not to exceed $5,000, required by the commissioner;

(2) in the form required by the commissioner; and

(3) conditioned on compliance with this chapter and rules adopted under this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 801, Sec. 6, eff. Sept. 1, 1999.

Sec. 371.155. PAWNSHOP SECURITY. A pawnshop shall have:

(1) one or more alarm systems sufficient to detect and signal unauthorized entry or the presence of an unauthorized person to provide for the security of pledged goods; and

(2) a safe to provide for the security of pledged jewelry.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 801, Sec. 7, eff. Sept. 1, 1999.

Sec. 371.156. PAWN TRANSACTION. (a) Items that are usually

sold as a set are considered a single item and must be included in the same pawn transaction.

(b) A pledged item together with items that are accessories to the pledged item are considered a single item and must be included in the same pawn transaction.

(c) A separate pawn transaction retains its separate character when it is renewed, unless the parties agree otherwise.

(d) A pawnbroker may not divide a pawn transaction into more than one transaction to obtain, or with the effect of obtaining, a total pawn service charge that exceeds the charge authorized for an amount financed that is equal to the total of the amounts financed in the resulting transactions.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.157. PAWN TICKET. A pawnbroker, at the time a pawn transaction is entered, shall deliver to the pledgor a pawn ticket or other memorandum that clearly shows:

(1) the name and address of the pawnshop;

(2) the pledgor's name, address, and physical description and a driver's license number, military identification number, identification certificate number, or other official number that can identify the pledgor;

(3) the date of the transaction;

(4) an identification and description of the pledged goods, including serial numbers if reasonably available;

(5) the amount of cash advanced or credit extended to the pledgor, designated as "Amount Financed";

(6) the amount of the pawn service charge, designated as "Finance Charge";

(7) the total amount, consisting of the amount financed plus the finance charge, that must be paid to redeem the pledged goods on the maturity date, designated as "Total of Payments";

(8) the "Annual Percentage Rate," computed according to regulations issued by the Federal Reserve Board under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.), as amended;

(9) the maturity date of the pawn transaction; and

(10) a statement that:

(A) the pledgor is not obligated to redeem the pledged

goods; and

(B) the pledged goods may be forfeited to the pawnbroker on the 31st day after the maturity date.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1199, Sec. 1, eff. Sept. 1, 2003.

Sec. 371.158. AMOUNT FINANCED. The amount financed by a pawn transaction may not exceed the amount computed under Subchapter C, Chapter 341, using the reference amount of $2,500.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.159. PAWN SERVICE CHARGE. (a) A pawnbroker may not contract for, charge, or receive an amount, other than a pawn service charge, as a charge for credit in connection with a pawn transaction.

(b) A pawn service charge may not exceed the charge disclosed in the pawn ticket or other memorandum delivered to the pledgor.

(c) A pawn service charge may not exceed an amount equal to:

(1) 20 percent of the total amount financed for one month if that amount is less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference amount of $30;

(2) 15 percent of the total amount financed for one month if that amount is more than the amount computed for Subdivision (1) but less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference amount of $200;

(3) 2-1/2 percent of the total amount financed for one month if that amount is more than the amount computed for Subdivision (2) but less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference amount of $300; or

(4) 1 percent of the total amount financed for one month if that amount is more than the amount computed for Subdivision (3).

(d) A rate set by Subsection (c) shall be proportionately adjusted for a finance period of less than one month.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1235, Sec. 22, eff. Sept. 1, 2001.

Sec. 371.160. MATURITY DATE; MEMORANDUM OF EXTENSION. (a) A pawnbroker may not enter a pawn transaction that has a maturity date later than one month after the date of the transaction.

(b) The pledgor and the pawnbroker by written agreement may change the maturity date of a pawn transaction to a subsequent date.

(c) The written agreement must clearly set out:

(1) the new redemption date; and

(2) the amount of any additional pawn service charge.

(d) The pawnbroker must provide a copy of the written agreement to the pledgor.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.161. EARLY REDEMPTION: REDUCTION OF PAWN SERVICE CHARGE. If a pledgor redeems the pledged goods before the maturity date of the pawn transaction, any part of the pawn service charge that exceeds $15 shall be reduced by an amount equal to one-thirtieth of the total pawn service charge for each day between the date on which redemption occurs and the original maturity date.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.162. PRESENTATION OF TICKET; PRESUMPTION. Except as provided by Section 371.163(a), a person who presents proper identification and a pawn ticket to the pawnbroker is presumed to be entitled to redeem the pledged goods described by the pawn ticket.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 801, Sec. 8, eff. Sept. 1, 1999.

Sec. 371.163. LOST OR DESTROYED TICKET. (a) If a pawn ticket is lost, destroyed, or stolen, the pledgor may notify the pawnbroker of that fact in writing. Receipt of this notice invalidates the pawn ticket if the pledged goods have not been redeemed.

(b) The pawnbroker shall require the pledgor to make a written statement of the loss, destruction, or theft before the pawnbroker delivers the pledged goods or issues a new pawn ticket.

(c) The pawnbroker shall record on the written statement:

(1) the date the statement is made; and

(2) the number of the pawn ticket lost, destroyed, or stolen.

(d) The statement must be signed by the pawnbroker or the pawnshop employee who accepts the statement from the pledgor.

(e) A pawnbroker is entitled to a fee of not more than $1 in connection with the accepting of a written statement under this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 801, Sec. 9, eff. Sept. 1, 1999.

Sec. 371.164. DUTY OF REASONABLE CARE. A pawnbroker shall exercise reasonable care to protect pledged goods from loss or damage.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.165. RETURN OF PLEDGED GOODS. A pawnbroker shall return pledged goods to the pledgor on payment of the total amount due the pawnbroker in connection with the pawn transaction.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.166. REDEMPTION BY MAIL. A pawnbroker shall permit a pledgor to redeem pledged goods by mail.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.167. LOST OR DAMAGED GOODS. (a) A pawnbroker shall replace pledged goods that are lost or damaged while in the pawnbroker's possession with like kind merchandise. The replacement is subject to approval by the commissioner and the pledgor must exhaust this administrative remedy with respect to the lost or damaged pledged goods before seeking a remedy in court. If the commissioner does not approve a replacement before the 91st day after the date on which the commissioner receives a complaint from the

pledgor concerning the lost or damaged goods, or if the pledgor does not accept the commissioner's determination, the pledgor may seek a remedy in court.

(b) For purposes of this section, goods are considered lost if the goods are destroyed or have disappeared and are unavailable for return to the pledgor.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1399, Sec. 7, eff. Sept. 1, 1999.

Sec. 371.168. EXEMPTION FROM CRIMINAL LIABILITY. A pawnbroker is not criminally liable for damages or loss due to an act of God or circumstances beyond the pawnbroker's control.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.169. UNREDEEMED PLEDGED GOODS; FORFEITURE. (a) A pawnbroker shall hold pledged goods not redeemed by the pledgor on or before the maturity date stated in the pawn ticket issued in connection with a pawn transaction for at least 30 days after that date.

(b) On or before the 30th day after the original maturity date, the pledgor may redeem the pledged goods by paying:

(1) the originally agreed redemption price; and

(2) an additional pawn service charge equal to one-thirtieth of the original monthly pawn service charge for each day after the original maturity date, including the day on which the pledged goods are finally redeemed.

(c) Pledged goods not redeemed on or before the 30th day after the original maturity date may, at the option of the pawnbroker, be forfeited to the pawnbroker.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1235, Sec. 23, eff. Sept. 1, 2001.

Sec. 371.170. REDEMPTION OR PAYMENT BY PLEDGOR NOT REQUIRED. A pledgor is not obligated to redeem pledged goods or to make a payment on a pawn transaction.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.171. AGREEMENT REQUIRING PLEDGOR'S PERSONAL LIABILITY PROHIBITED. A pawnbroker may not enter an agreement requiring the personal liability of the pledgor in connection with a pawn transaction.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.172. WAIVER OF PLEDGOR'S RIGHTS PROHIBITED. A pawnbroker may not accept a waiver of a right or protection of a pledgor under this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.173. INSURANCE CHARGE LIMITED. A pawnbroker may not impose a charge for insurance in connection with a pawn transaction, except that a pawnbroker may impose a charge in the amount of the actual cost to insure pledged goods being shipped to a pledgor who redeemed the goods by mail.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.174. IDENTIFICATION OF PLEDGOR OR SELLER REQUIRED. (a) A pawnbroker shall require identification of:

(1) the pledgor if a transaction is a pawn transaction; or

(2) the seller if a transaction is a purchase of goods by the pawnbroker.

(b) Identification is acceptable only if it contains a photograph of the pledgor or seller and is:

(1) a state driver's license;

(2) a state identification card;

(3) a passport;

(4) a military identification;

(5) a certificate of identification from the Mexican Consulate, certificado de matricula consular; or

(6) identification issued by the agency of the United

States responsible for citizenship and immigration.

(c) A pawnbroker shall make the pawnbroker's best effort to determine whether the identification:

(1) is apparently genuine and unaltered; and

(2) properly identifies the pledgor or seller.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1199, Sec. 2, eff. Sept. 1, 2003.

Sec. 371.175. PROPERTY IDENTIFICATION TAGS REQUIRED. (a) A pawnshop shall identify by a tag or similar means each item of goods located in the pawnshop that:

(1) has a retail or sale value of more than $25; and

(2) can be tagged or similarly identified.

(b) This section does not apply to:

(1) the personal effects of a person in the pawnshop; or

(2) furniture, fixtures, or equipment of the pawnshop.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 801, Sec. 10, eff. Sept. 1, 1999.

Sec. 371.176. TRANSACTIONS WITH MINORS OR PERSONS UNDER THE INFLUENCE OF ALCOHOL OR DRUGS PROHIBITED. A pawnbroker may not:

(1) accept a pledge or purchase property from a person under 18 years of age; or

(2) transact business with a person believed to be under the influence of alcohol or drugs.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 801, Sec. 11, eff. Sept. 1, 1999.

Sec. 371.177. PURCHASE OF USED PERSONAL PROPERTY. A pawnbroker may not purchase used personal property from a person other than another pawnbroker unless a record is established that contains:

(1) the seller's name, address, and physical description and a driver's license number, military identification number, identification certificate number, or other official number that can identify the seller;

(2) a complete description of the property, including the serial number, if reasonably available, or other identifying characteristics; and

(3) the seller's signed statement that the seller has the right to sell the property.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.178. ACCEPTANCE OF BUILDING CONSTRUCTION MATERIALS. (a) A pawnbroker may not accept the pledge of building construction materials unless a record is established that contains the information required by Section 371.177.

(b) In this section, "building construction materials" includes:

(1) copper pipe, tubing, or wiring;

(2) aluminum wire;

(3) plumbing supplies;

(4) electrical supplies;

(5) window glass;

(6) lumber; and

(7) other similar materials.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.179. DISPLAYS OF CERTAIN WEAPONS PROHIBITED. A pawnbroker may not display for sale in a storefront window or sidewalk display case or depict on a sign or advertisement in such a way that the item, sign, or advertisement may be viewed from a street:

(1) a pistol;

(2) a dirk;

(3) a dagger;

(4) a blackjack;

(5) a hand chain;

(6) a sword cane;

(7) knuckles made of metal or any other hard substance; or

(8) a switchblade, springblade, or throwblade knife.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.180. ADVERTISEMENTS. (a) A person who does not hold a pawnshop license may not:

(1) advertise or cause to be advertised the making, arranging, or negotiating of a loan subject to this chapter; or

(2) use in an advertisement a word, symbol, or statement that states or suggests that the person is a pawnbroker.

(b) In each advertisement that purports to offer credit subject to this chapter, the advertiser shall disclose the legal or registered name of the advertiser and the physical address of the advertiser's place of business. This subsection does not apply to an advertisement located on the premises of the advertiser's place of business.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.181. STOLEN GOODS. (a) A pawnbroker shall monitor goods purchased, accepted in pawn, or otherwise acquired by the pawnbroker in order to identify and prohibit transactions involving stolen goods.

(b) The Finance Commission of Texas shall adopt rules that allow:

(1) a consumer who has filed an offense report with a local law enforcement agency to request that a pawnbroker search the records of the pawnshop; and

(2) the pawnbroker to assist the consumer and the local law enforcement agency in locating and recovering stolen property.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 101, eff. Sept. 1, 2001.

Sec. 371.182. HOLD PERIOD. The commissioner may designate a reasonable hold period during which a pawnbroker may not sell or otherwise dispose of an item of goods acquired and offered for sale or other disposition by the pawnbroker.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 801, Sec. 12, eff. Sept. 1, 1999.

Sec. 371.183. CONSUMER INFORMATION. The Finance Commission of Texas by rule may require a pawnshop to display, in an area in the pawnshop accessible to a consumer, materials provided by the commissioner that are designed to:

(1) inform a consumer of the duties, rights, and responsibilities of parties to a transaction regulated by the commissioner; and

(2) inform and assist a robbery, burglary, or theft victim.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 102, eff. Sept. 1, 2001.

SUBCHAPTER E. INSPECTIONS AND EXAMINATIONS

Sec. 371.201. EXAMINATION BY COMMISSIONER. At any time the commissioner considers necessary, the commissioner or the commissioner's representative may:

(1) examine a pawnbroker's place of business;

(2) inquire into and examine a pawnbroker's transactions, books, accounts, papers, correspondence, or other records that relate to the business of the pawnbroker; and

(3) examine or inspect pledged goods and goods required to be identified by Section 371.177.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.202. ACCESS TO RECORDS; COPIES. (a) During an examination the pawnbroker shall give the commissioner or the commissioner's representative free access to the pawnbroker's office, place of business, files, safe, or vault.

(b) The commissioner or the representative is entitled to copy any book, account, paper, correspondence, or other record that relates to the business of the pawnbroker.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.203. OATHS. During an examination the commissioner or

the commissioner's representative may administer an oath and examine a person under oath on a subject relating to a matter regarding which the commissioner is authorized or required by this chapter to consider, investigate, or secure information.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.204. INSPECTION BY PEACE OFFICER. A pawnbroker shall allow a peace officer to inspect the pawnbroker's books, accounts, papers, correspondence, or other records that relate to the business of the pawnbroker at any reasonable time without judicial writ or other process.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.205. REFUSAL TO ALLOW EXAMINATION OR INSPECTION. A pawnbroker who fails or refuses to permit an examination or copying of books or other documents or an examination or inspection of goods authorized by this subchapter violates this chapter. The failure or refusal is grounds for the suspension or revocation of the license.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.206. CONFIDENTIALITY. Information obtained during an examination or inspection authorized by this subchapter is confidential and privileged except for use by the commissioner or in a criminal investigation or prosecution.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.207. FEE. A pawnbroker shall pay to the commissioner an amount assessed by the commissioner to cover the direct and indirect costs of an examination and a proportionate share of general administrative expenses.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.208. VERIFICATION OF NET ASSETS. If the commissioner questions the amount of a pawnbroker's net assets, the commissioner may require certification by an independent certified public accountant that:

(1) the accountant has reviewed the pawnbroker's books, other records, and transactions during the reporting year;

(2) the books and other records are maintained using generally accepted accounting principles; and

(3) the pawnbroker meets the net assets requirement of Section 371.072.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER F. LICENSE REVOCATION, SUSPENSION, AND SURRENDER

Sec. 371.251. REVOCATION OR SUSPENSION OF PAWNSHOP LICENSE. (a) After notice and opportunity for a hearing, the commissioner may revoke or suspend a pawnshop license if the commissioner finds that:

(1) the pawnbroker has not paid a fee or charge imposed by the commissioner under this chapter;

(2) the pawnbroker, knowingly or without exercising due care to prevent the violation, has violated this chapter or a rule adopted or an order issued under this chapter;

(3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original license application, clearly would have justified refusal to issue the license;

(4) the pawnbroker has established an association with an unlicensed person who, with the knowledge of the pawnbroker, has violated this chapter;

(5) the pawnbroker has aided or conspired with a person to circumvent this chapter;

(6) the pawnbroker or a legal or beneficial owner of the pawnbroker has been convicted of a crime that the commissioner finds directly relates to the duties and responsibilities of the occupation of pawnbroker or would otherwise make the person unfit for a pawnshop license under Section 371.052;

(7) the financial responsibility, experience, character, or general fitness of the pawnbroker or its owners and managers do not command the confidence of the public or warrant the belief that the

business will be operated lawfully, fairly, and within the purposes of this chapter; or

(8) the pawnbroker has not maintained the minimum net assets required by Section 371.072.

(b) The commissioner may:

(1) place on probation a person whose license is suspended; or

(2) reprimand a pawnbroker for violating this chapter or a rule adopted under this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 79, eff. September 1, 2019.

Sec. 371.252. EFFECT OF REVOCATION, SUSPENSION, OR SURRENDER OF PAWNSHOP LICENSE. Revocation, suspension, or surrender of a pawnshop license does not affect a preexisting contract between the pawnbroker and a pledgor.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.253. NOTICE OF REVOCATION. (a) On revocation of a pawnshop license by the commissioner, the pawnbroker shall send notice of the revocation to each pledgor with goods in the possession of, but not forfeited to, the pawnbroker on the revocation date.

(b) The notice must be:

(1) in a form prescribed by the commissioner; and

(2) mailed not later than the fifth day after the revocation date to the pledgor at the address recorded on the pawn ticket.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.254. REDEMPTION OF GOODS AFTER LICENSE REVOCATION OR SUSPENSION. (a) After revocation of a pawnshop license, the pawnbroker, for the sole purpose of allowing a pledgor to redeem pledged goods, shall maintain usual business hours at the pawnshop

for 60 days after the latest maturity date of any pawn transaction made at that pawnshop.

(b) If after the revocation of a license and within the period provided by Section 371.169 a pledgor requests an extension of that period, the pawnbroker shall grant an extension not to exceed 30 days.

(c) The commissioner may exercise any authority conferred on the commissioner to protect the interest of a pledgor of goods in the possession of a pawnbroker whose license has been revoked, including assessment of a penalty or administrative enforcement under this chapter.

(d) On suspension of a pawnshop license by the commissioner, the pawnbroker shall maintain the pawnshop's usual business hours during the suspension for the sole purpose of allowing a pledgor to redeem goods or to renew a pawn transaction that matures during the suspension.

(e) A pawnbroker shall renew a pawn transaction that matures during a suspension if, not later than the 60th day after the maturity date, the pledgor requests a renewal.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.255. REVOCATION OR SUSPENSION OF PAWNSHOP EMPLOYEE LICENSE. After notice and hearing, the commissioner may revoke or suspend a pawnshop employee license if the commissioner finds that:

(1) the license holder knowingly or recklessly violated this chapter or a rule adopted or order issued under this chapter;

(2) a fact or condition exists that, if it had existed or had been known to exist at the time of the original license application, clearly would have justified refusal to issue the license; or

(3) the business repute and general fitness of the license holder do not warrant belief that the license holder will operate the business lawfully and fairly within the provisions of this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 80, eff. September 1, 2019.

Sec. 371.256. HEARING. (a) The commissioner shall send written notice of a pawnshop employee license revocation or suspension hearing to:

(1) the license holder; and

(2) the employing pawnbroker.

(b) The commissioner shall hold the hearing not earlier than the 21st day after the date the notice was sent.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.257. SURRENDER OF LICENSE. (a) The holder of a pawnshop license or a pawnshop employee license may surrender the license by delivering it to the commissioner with written notice of surrender.

(b) Surrender does not affect a license holder's civil or criminal liability for an act committed before the surrender.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.258. REINSTATEMENT OF LICENSE. (a) This section applies to a pawnshop license or a pawnshop employee license.

(b) The commissioner may reinstate a suspended pawnshop license or pawnshop employee license or issue a new license to the person whose license or licenses have been revoked if no fact or condition exists that clearly would have justified refusal to issue the license originally.

(c) The commissioner shall reinstate an expired pawnbroker license if, not later than the 180th day after the date on which the license expired, the pawnbroker pays the commissioner the delinquent $125 fee plus a reinstatement fee of $1,000. After a pawnbroker's license has expired, the commissioner shall promptly send notice of reinstatement rights to the delinquent pawnbroker by certified mail.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 801, Sec. 13, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1399, Sec. 8, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 81, eff. September 1, 2019.

Sec. 371.259. CERTIFICATE OF STANDING; COPIES. The commissioner, under the commissioner's seal and signature, shall provide a certificate of good standing or a certified copy of a pawnshop license or a pawnshop employee license to a person who applies and pays for the certificate or copy.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER G. ENFORCEMENT; PENALTIES

Sec. 371.301. COMMISSIONER'S ENFORCEMENT POWERS. For purposes of enforcing this chapter, the commissioner:

(1) has the powers granted to the commissioner under Chapter 14;

(2) may exercise those powers in the same manner as those powers may be exercised under:

(A) Chapters 14, 392, and 394;

(B) Subtitle B, Title 4; and

(C) Chapters 51, 302, 601, and 621, Business & Commerce Code; and

(3) has any authority granted the commissioner by other law.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.19, eff. April 1, 2009.

Sec. 371.302. ORDER TO END VIOLATION; INJUNCTION; DAMAGES. (a) If the commissioner has reasonable cause to believe that a person is violating this chapter, the commissioner, in addition to and without prejudice to other authority provided by this chapter, may enter an order requiring the person to stop or to refrain from the violation.

(b) At the commissioner's request, the attorney general or an attorney authorized to represent this state in district court shall sue in any district court with venue or in a district court of Travis County to enjoin a person from violating or continuing a violation of

this chapter or from acting to further a violation. The court may enter an order or judgment awarding a preliminary or permanent injunction. The court may issue an additional order or judgment for actual damages suffered by a person as a result of the violation.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.303. ADMINISTRATIVE PENALTY. (a) The commissioner may assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

(b) The commissioner may assess the administrative penalty in an amount not to exceed $1,000.

(c) Each day a violation continues or occurs may be considered a separate violation for purposes of this section. The aggregate amount of penalties that may be assessed under this section against a person during one calendar year may not exceed $10,000 for violations an element of which occurred at the same business location.

(d) In determining the amount of a penalty, the commissioner shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

(e) If, after investigation of a possible violation and the facts relating to that possible violation, the commissioner determines that a violation has occurred, the commissioner shall issue a preliminary report that states:

(1) the facts on which the conclusion is based;

(2) the fact that an administrative penalty is to be imposed; and

(3) the amount to be assessed.

(f) Not later than the 10th day after the date on which the commissioner issues the preliminary report, the commissioner shall send to the person charged with the violation a copy of the report and a statement that the person has a right to a hearing on the alleged violation and the amount of the penalty.

(g) Not later than the 20th day after the date on which the

report is sent, the person charged may make a written request for a hearing or may pay to the commissioner the amount of the administrative penalty. A person who does not request a hearing or pay the amount of the penalty within the prescribed time waives the right to a hearing.

(h) If the person charged accepts the commissioner's determination, the commissioner shall issue an order approving the determination and ordering payment of the recommended penalty.

(i) If it is determined after a hearing that the person has committed the alleged violation, the commissioner shall give written notice to the person of each finding established by the hearing and the amount of the penalty and shall enter an order requiring the person to pay the penalty.

(j) Not later than the 30th day after the date on which the notice is received, the person charged shall pay the administrative penalty in full.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 4.06, eff. September 1, 2005.

Sec. 371.304. ACTING WITHOUT A LICENSE; OFFENSES. (a) A person who violates Section 371.051 commits an offense.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 95(3), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 95(3), eff. September 1, 2019.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 95(3), eff. September 1, 2019.

(e) An offense under Subsection (a) is a misdemeanor punishable by:

(1) a fine not to exceed $10,000;

(2) confinement in county jail for a term not to exceed one year; or

(3) both the fine and confinement.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 95(3), eff.

September 1, 2019.

Sec. 371.305. WILFUL VIOLATION OF CHAPTER; OFFENSE. (a) A person commits an offense if the person holds a license under this chapter and:

(1) wilfully violates this chapter; or

(2) wilfully makes a false entry in a record specifically required by this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $1,000.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.306. PENALTY FOR CERTAIN VIOLATIONS. (a) A pawnbroker who contracts for, charges, or collects a pawn service charge that is greater than the amount authorized by this chapter or otherwise violates this chapter:

(1) is liable for twice the amount of the pawn service charge contracted for; and

(2) shall return the goods pledged in connection with the pawn transaction on request of the pledgor and payment of the balance due.

(b) A pawnbroker who contracts for, charges, or collects a pawn service charge that is greater than twice the amount authorized by this chapter:

(1) is not entitled to collect any amount on the pawn transaction; and

(2) shall return the goods pledged in connection with the pawn transaction on request of the pledgor.

(c) Subsection (a) or (b) does not apply to a violation that results from an accidental and bona fide error, corrected upon discovery.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

TITLE 5. PROTECTION OF CONSUMERS OF FINANCIAL SERVICES

CHAPTER 391. FURNISHING FALSE CREDIT INFORMATION

Sec. 391.001. DEFINITION. In this chapter, "credit reporting

bureau" means a person who engages in the practice of assembling or reporting credit information about individuals for the purpose of furnishing the information to a third party.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 391.002. FURNISHING FALSE INFORMATION; PENALTY. (a) A person commits an offense if the person knowingly furnishes false information about another person's creditworthiness, credit standing, or credit capacity to a credit reporting bureau.

(b) A credit reporting bureau commits an offense if the credit reporting bureau knowingly furnishes false information about a person's creditworthiness, credit standing, or credit capacity to a third party.

(c) An offense under this section is a misdemeanor punishable by a fine of not more than $200.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 392. DEBT COLLECTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 392.001. DEFINITIONS. In this chapter:

(1) "Consumer" means an individual who has a consumer debt.

(2) "Consumer debt" means an obligation, or an alleged obligation, primarily for personal, family, or household purposes and arising from a transaction or alleged transaction.

(3) "Creditor" means a party, other than a consumer, to a transaction or alleged transaction involving one or more consumers.

(4) "Credit bureau" means a person who, for compensation, gathers, records, and disseminates information relating to the creditworthiness, financial responsibility, and paying habits of, and similar information regarding, a person for the purpose of furnishing that information to another person.

(5) "Debt collection" means an action, conduct, or practice in collecting, or in soliciting for collection, consumer debts that are due or alleged to be due a creditor.

(6) "Debt collector" means a person who directly or indirectly engages in debt collection and includes a person who sells or offers to sell forms represented to be a collection system,

device, or scheme intended to be used to collect consumer debts.

(7) "Third-party debt collector" means a debt collector, as defined by 15 U.S.C. Section 1692a(6), but does not include an attorney collecting a debt as an attorney on behalf of and in the name of a client unless the attorney has nonattorney employees who:

(A) are regularly engaged to solicit debts for collection; or

(B) regularly make contact with debtors for the purpose of collection or adjustment of debts.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.42, eff. Sept. 1, 1999.

SUBCHAPTER B. SURETY BOND

Sec. 392.101. BOND REQUIREMENT. (a) A third-party debt collector or credit bureau may not engage in debt collection unless the third-party debt collector or credit bureau has obtained a surety bond issued by a surety company authorized to do business in this state as prescribed by this section. A copy of the bond must be filed with the secretary of state.

(b) The bond must be in favor of:

(1) any person who is damaged by a violation of this chapter; and

(2) this state for the benefit of any person who is damaged by a violation of this chapter.

(c) The bond must be in the amount of $10,000.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 392.102. CLAIM AGAINST BOND. A person who claims against a bond for a violation of this chapter may maintain an action against the third-party debt collector or credit bureau and against the surety. The aggregate liability of the surety to all persons damaged by a violation of this chapter may not exceed the amount of the bond.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER C. INFORMATION IN FILES OF CREDIT BUREAU OR DEBT COLLECTOR

Sec. 392.201. REPORT TO CONSUMER. Not later than the 45th day after the date of the request, a credit bureau shall provide to a person in its registry a copy of all information contained in its files concerning that person.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 392.202. CORRECTION OF THIRD-PARTY DEBT COLLECTOR'S OR CREDIT BUREAU'S FILES. (a) An individual who disputes the accuracy of an item that is in a third-party debt collector's or credit bureau's file on the individual and that relates to a debt being collected by the third-party debt collector may notify in writing the third-party debt collector of the inaccuracy. The third-party debt collector shall make a written record of the dispute. If the third-party debt collector does not report information related to the dispute to a credit bureau, the third-party debt collector shall cease collection efforts until an investigation of the dispute described by Subsections (b)-(e) determines the accurate amount of the debt, if any. If the third-party debt collector reports information related to the dispute to a credit bureau, the reporting third-party debt collector shall initiate an investigation of the dispute described by Subsections (b)-(e) and shall cease collection efforts until the investigation determines the accurate amount of the debt, if any. This section does not affect the application of Chapter 20, Business & Commerce Code, to a third-party debt collector subject to that chapter.

(b) Not later than the 30th day after the date a notice of inaccuracy is received, a third-party debt collector who initiates an investigation shall send a written statement to the individual:

(1) denying the inaccuracy;

(2) admitting the inaccuracy; or

(3) stating that the third-party debt collector has not had sufficient time to complete an investigation of the inaccuracy.

(c) If the third-party debt collector admits that the item is inaccurate under Subsection (b), the third-party debt collector shall:

(1) not later than the fifth business day after the date of the admission, correct the item in the relevant file; and

(2) immediately cease collection efforts related to the

portion of the debt that was found to be inaccurate and on correction of the item send, to each person who has previously received a report from the third-party debt collector containing the inaccurate information, notice of the inaccuracy and a copy of an accurate report.

(d) If the third-party debt collector states that there has not been sufficient time to complete an investigation, the third-party debt collector shall immediately:

(1) change the item in the relevant file as requested by the individual;

(2) send to each person who previously received the report containing the information a notice that is equivalent to a notice under Subsection (c) and a copy of the changed report; and

(3) cease collection efforts.

(e) On completion by the third-party debt collector of the investigation, the third-party debt collector shall inform the individual of the determination of whether the item is accurate or inaccurate. If the third-party debt collector determines that the information was accurate, the third-party debt collector may again report that information and resume collection efforts.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 851, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER D. PROHIBITED DEBT COLLECTION METHODS

Sec. 392.301. THREATS OR COERCION. (a) In debt collection, a debt collector may not use threats, coercion, or attempts to coerce that employ any of the following practices:

(1) using or threatening to use violence or other criminal means to cause harm to a person or property of a person;

(2) accusing falsely or threatening to accuse falsely a person of fraud or any other crime;

(3) representing or threatening to represent to any person other than the consumer that a consumer is wilfully refusing to pay a nondisputed consumer debt when the debt is in dispute and the consumer has notified in writing the debt collector of the dispute;

(4) threatening to sell or assign to another the obligation of the consumer and falsely representing that the result of the sale or assignment would be that the consumer would lose a defense to the

consumer debt or would be subject to illegal collection attempts;

(5) threatening that the debtor will be arrested for nonpayment of a consumer debt without proper court proceedings;

(6) threatening to file a charge, complaint, or criminal action against a debtor when the debtor has not violated a criminal law;

(7) threatening that nonpayment of a consumer debt will result in the seizure, repossession, or sale of the person's property without proper court proceedings; or

(8) threatening to take an action prohibited by law.

(b) Subsection (a) does not prevent a debt collector from:

(1) informing a debtor that the debtor may be arrested after proper court proceedings if the debtor has violated a criminal law of this state;

(2) threatening to institute civil lawsuits or other judicial proceedings to collect a consumer debt; or

(3) exercising or threatening to exercise a statutory or contractual right of seizure, repossession, or sale that does not require court proceedings.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 392.302. HARASSMENT; ABUSE. In debt collection, a debt collector may not oppress, harass, or abuse a person by:

(1) using profane or obscene language or language intended to abuse unreasonably the hearer or reader;

(2) placing telephone calls without disclosing the name of the individual making the call and with the intent to annoy, harass, or threaten a person at the called number;

(3) causing a person to incur a long distance telephone toll, telegram fee, or other charge by a medium of communication without first disclosing the name of the person making the communication; or

(4) causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 392.303. UNFAIR OR UNCONSCIONABLE MEANS. (a) In debt collection, a debt collector may not use unfair or unconscionable means that employ the following practices:

(1) seeking or obtaining a written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessaries of life if the obligation was not incurred for those necessaries;

(2) collecting or attempting to collect interest or a charge, fee, or expense incidental to the obligation unless the interest or incidental charge, fee, or expense is expressly authorized by the agreement creating the obligation or legally chargeable to the consumer; or

(3) collecting or attempting to collect an obligation under a check, draft, debit payment, or credit card payment, if:

(A) the check or draft was dishonored or the debit payment or credit card payment was refused because the check or draft was not drawn or the payment was not made by a person authorized to use the applicable account;

(B) the debt collector has received written notice from a person authorized to use the account that the check, draft, or payment was unauthorized; and

(C) the person authorized to use the account has filed a report concerning the unauthorized check, draft, or payment with a law enforcement agency, as defined by Article 59.01, Code of Criminal Procedure, and has provided the debt collector with a copy of the report.

(b) Notwithstanding Subsection (a)(2), a creditor may charge a reasonable reinstatement fee as consideration for renewal of a real property loan or contract of sale, after default, if the additional fee is included in a written contract executed at the time of renewal.

(c) Subsection (a)(3) does not prohibit a debt collector from collecting or attempting to collect an obligation under a check, draft, debit payment, or credit card payment if the debt collector has credible evidence, including a document, video recording, or witness statement, that the report filed with a law enforcement agency, as required by Subsection (a)(3)(C), is fraudulent and that the check, draft, or payment was authorized.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 505 (H.B. 628), Sec. 1, eff. September 1, 2005.

Sec. 392.304. FRAUDULENT, DECEPTIVE, OR MISLEADING REPRESENTATIONS. (a) Except as otherwise provided by this section, in debt collection or obtaining information concerning a consumer, a debt collector may not use a fraudulent, deceptive, or misleading representation that employs the following practices:

(1) using a name other than the:

(A) true business or professional name or the true personal or legal name of the debt collector while engaged in debt collection; or

(B) name appearing on the face of the credit card while engaged in the collection of a credit card debt;

(2) failing to maintain a list of all business or professional names known to be used or formerly used by persons collecting consumer debts or attempting to collect consumer debts for the debt collector;

(3) representing falsely that the debt collector has information or something of value for the consumer in order to solicit or discover information about the consumer;

(4) failing to disclose clearly in any communication with the debtor the name of the person to whom the debt has been assigned or is owed when making a demand for money;

(5) in the case of a third-party debt collector, failing to disclose, except in a formal pleading made in connection with a legal action:

(A) that the communication is an attempt to collect a debt and that any information obtained will be used for that purpose, if the communication is the initial written or oral communication between the third-party debt collector and the debtor; or

(B) that the communication is from a debt collector, if the communication is a subsequent written or oral communication between the third-party debt collector and the debtor;

(6) using a written communication that fails to indicate clearly the name of the debt collector and the debt collector's street address or post office box and telephone number if the written notice refers to a delinquent consumer debt;

(7) using a written communication that demands a response to a place other than the debt collector's or creditor's street address or post office box;

(8) misrepresenting the character, extent, or amount of a consumer debt, or misrepresenting the consumer debt's status in a judicial or governmental proceeding;

(9) representing falsely that a debt collector is vouched for, bonded by, or affiliated with, or is an instrumentality, agent, or official of, this state or an agency of federal, state, or local government;

(10) using, distributing, or selling a written communication that simulates or is represented falsely to be a document authorized, issued, or approved by a court, an official, a governmental agency, or any other governmental authority or that creates a false impression about the communication's source, authorization, or approval;

(11) using a seal, insignia, or design that simulates that of a governmental agency;

(12) representing that a consumer debt may be increased by the addition of attorney's fees, investigation fees, service fees, or other charges if a written contract or statute does not authorize the additional fees or charges;

(13) representing that a consumer debt will definitely be increased by the addition of attorney's fees, investigation fees, service fees, or other charges if the award of the fees or charges is subject to judicial discretion;

(14) representing falsely the status or nature of the services rendered by the debt collector or the debt collector's business;

(15) using a written communication that violates the United States postal laws and regulations;

(16) using a communication that purports to be from an attorney or law firm if it is not;

(17) representing that a consumer debt is being collected by an attorney if it is not;

(18) representing that a consumer debt is being collected by an independent, bona fide organization engaged in the business of collecting past due accounts when the debt is being collected by a subterfuge organization under the control and direction of the person who is owed the debt; or

(19) using any other false representation or deceptive means to collect a debt or obtain information concerning a consumer.

(b) Subsection (a)(4) does not apply to a person servicing or collecting real property first lien mortgage loans or credit card debts.

(c) Subsection (a)(6) does not require a debt collector to disclose the names and addresses of employees of the debt collector.

(d) Subsection (a)(7) does not require a response to the address of an employee of a debt collector.

(e) Subsection (a)(18) does not prohibit a creditor from owning or operating a bona fide debt collection agency.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 851, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 28.01, eff. Jan. 11, 2004.

Sec. 392.305. DECEPTIVE USE OF CREDIT BUREAU NAME. A person may not use "credit bureau," "retail merchants," or "retail merchants association" in the person's business or trade name unless:

(1) the person is engaged in gathering, recording, and disseminating information, both favorable and unfavorable, relating to the creditworthiness, financial responsibility, and paying habits of, and similar information regarding, persons being considered for credit extension so that a prospective creditor can make a sound decision in the extension of credit; or

(2) the person is a nonprofit retail trade association that:

(A) consists of individual members;

(B) qualifies as a bona fide business league as defined by the United States Internal Revenue Service; and

(C) does not engage in the business of debt collection or credit reporting.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 392.306. USE OF INDEPENDENT DEBT COLLECTOR. A creditor may not use an independent debt collector if the creditor has actual knowledge that the independent debt collector repeatedly or continuously engages in acts or practices that are prohibited by this

chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 392.307. COLLECTION OF CERTAIN CONSUMER DEBT BY DEBT BUYERS. (a) In this section:

(1) "Charged-off debt" means a consumer debt that a creditor has determined to be a loss or expense to the creditor instead of an asset.

(2) "Debt buyer" means a person who purchases or otherwise acquires a consumer debt from a creditor or other subsequent owner of the consumer debt, regardless of whether the person collects the consumer debt, hires a third party to collect the consumer debt, or hires an attorney to pursue collection litigation in connection with the consumer debt. The term does not include:

(A) a person who acquires in-default or charged-off debt that is incidental to the purchase of a portfolio that predominantly consists of consumer debt that has not been charged off; or

(B) a check services company that acquires the right to collect on a paper or electronic negotiable instrument, including an Automated Clearing House (ACH) authorization to debit an account that has not been processed.

(b) Unless otherwise expressly provided, this section prevails to the extent of any conflict between this section and any other law of this state.

(c) A debt buyer may not, directly or indirectly, commence an action against or initiate arbitration with a consumer to collect a consumer debt after the expiration of the applicable limitations period provided by Section 16.004, Civil Practice and Remedies Code, or Section 3.118, Business & Commerce Code.

(d) If an action to collect a consumer debt is barred under Subsection (c), the cause of action is not revived by a payment of the consumer debt, an oral or written reaffirmation of the consumer debt, or any other activity on the consumer debt.

(e) If a debt buyer is engaged in debt collection for a consumer debt for which an action to collect the debt is barred under Subsection (c), the debt buyer, or a debt collector acting on behalf of the debt buyer, shall provide the following notice in the initial

written communication with the consumer relating to the debt collection:

(1) if the reporting period for including the consumer debt in a consumer report prepared by a consumer reporting agency has not expired under Section 605, Fair Credit Reporting Act (15 U.S.C. Section 1681c), and the debt buyer furnishes to a consumer reporting agency information regarding the consumer debt, "THE LAW LIMITS HOW LONG YOU CAN BE SUED ON A DEBT. BECAUSE OF THE AGE OF YOUR DEBT, WE WILL NOT SUE YOU FOR IT. IF YOU DO NOT PAY THE DEBT, [INSERT NAME OF DEBT BUYER] MAY CONTINUE TO REPORT IT TO CREDIT REPORTING AGENCIES AS UNPAID FOR AS LONG AS THE LAW PERMITS THIS REPORTING. THIS NOTICE IS REQUIRED BY LAW.";

(2) if the reporting period for including the consumer debt in a consumer report prepared by a consumer reporting agency has not expired under Section 605, Fair Credit Reporting Act (15 U.S.C. Section 1681c), but the debt buyer does not furnish to a consumer reporting agency information regarding the consumer debt, "THE LAW LIMITS HOW LONG YOU CAN BE SUED ON A DEBT. BECAUSE OF THE AGE OF YOUR DEBT, WE WILL NOT SUE YOU FOR IT. THIS NOTICE IS REQUIRED BY LAW."; or

(3) if the reporting period for including the consumer debt in a consumer report prepared by a consumer reporting agency has expired under Section 605, Fair Credit Reporting Act (15 U.S.C. Section 1681c), "THE LAW LIMITS HOW LONG YOU CAN BE SUED ON A DEBT. BECAUSE OF THE AGE OF YOUR DEBT, WE WILL NOT SUE YOU FOR IT, AND WE WILL NOT REPORT IT TO ANY CREDIT REPORTING AGENCY. THIS NOTICE IS REQUIRED BY LAW."

(f) A notice required under Subsection (e) must be in at least 12-point type that is boldfaced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material.

Added by Acts 2019, 86th Leg., R.S., Ch. 1055 (H.B. 996), Sec. 2, eff. September 1, 2019.

SUBCHAPTER E. DEFENSE, CRIMINAL PENALTY, AND CIVIL REMEDIES

Sec. 392.401. BONA FIDE ERROR. A person does not violate this chapter if the action complained of resulted from a bona fide error that occurred notwithstanding the use of reasonable procedures

adopted to avoid the error.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 392.402. CRIMINAL PENALTY. (a) Except as provided by Subsection (d), a person commits an offense if the person violates this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $100 or more than $500 for each violation.

(c) A misdemeanor charge under this section must be filed not later than the first anniversary of the date of the alleged violation.

(d) This section does not apply to a violation of Section 392.307.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1055 (H.B. 996), Sec. 3, eff. September 1, 2019.

Sec. 392.403. CIVIL REMEDIES. (a) A person may sue for:

(1) injunctive relief to prevent or restrain a violation of this chapter; and

(2) actual damages sustained as a result of a violation of this chapter.

(b) A person who successfully maintains an action under Subsection (a) is entitled to attorney's fees reasonably related to the amount of work performed and costs.

(c) On a finding by a court that an action under this section was brought in bad faith or for purposes of harassment, the court shall award the defendant attorney's fees reasonably related to the work performed and costs.

(d) If the attorney general reasonably believes that a person is violating or is about to violate this chapter, the attorney general may bring an action in the name of this state against the person to restrain or enjoin the person from violating this chapter.

(e) A person who successfully maintains an action under this section for violation of Section 392.101, 392.202, or 392.301(a)(3) is entitled to not less than $100 for each violation of this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 392.404. REMEDIES UNDER OTHER LAW. (a) A violation of this chapter is a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code, and is actionable under that subchapter.

(b) This chapter does not affect or alter a remedy at law or in equity otherwise available to a debtor, creditor, governmental entity, or other legal entity.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 393. CREDIT SERVICES ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 393.001. DEFINITIONS. In this chapter:

(1) "Consumer" means an individual who is solicited to purchase or who purchases the services of a credit services organization.

(2) "Consumer reporting agency" has the meaning assigned by Section 603(f), Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)).

(3) "Credit services organization" means a person who provides, or represents that the person can or will provide, for the payment of valuable consideration any of the following services with respect to the extension of consumer credit by others:

(A) improving a consumer's credit history or rating;

(B) obtaining an extension of consumer credit for a consumer; or

(C) providing advice or assistance to a consumer with regard to Paragraph (A) or (B).

(4) "Extension of consumer credit" means the right to defer payment of debt offered or granted primarily for personal, family, or household purposes or to incur the debt and defer its payment.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.002. PERSONS NOT COVERED. (a) This chapter does not apply to:

(1) a person:

(A) authorized to make a loan or grant an extension of consumer credit under the laws of this state or the United States; and

(B) subject to regulation and supervision by this state or the United States;

(2) a lender approved by the United States secretary of housing and urban development for participation in a mortgage insurance program under the National Housing Act (12 U.S.C. Section 1701 et seq.);

(3) a bank or savings association the deposits or accounts of which are eligible to be insured by the Federal Deposit Insurance Corporation or a subsidiary of the bank or association;

(4) a credit union doing business in this state;

(5) a nonprofit organization exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3));

(6) a real estate broker or salesperson licensed under Chapter 1101, Occupations Code, who is acting within the course and scope of that license;

(7) an individual licensed to practice law in this state who is acting within the course and scope of the individual's practice as an attorney;

(8) a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission acting within the course and scope of that regulation;

(9) a consumer reporting agency;

(10) a person whose primary business is making loans secured by liens on real property;

(11) a mortgage broker or loan officer licensed under Chapter 156, Finance Code, who is acting within the course and scope of that license; or

(12) an electronic return originator who:

(A) is an authorized Internal Revenue Service e-file provider; and

(B) makes, negotiates, arranges for, or transacts a loan that is based on a person's federal income tax refund on behalf of a bank, savings bank, savings and loan association, or credit union.

(b) In an action under this chapter, a person claiming an

exemption under this section has the burden of proving the exemption.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.036, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1254, Sec. 3, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 135, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.775, eff. Sept. 1, 2003.

Sec. 393.003. WAIVER VOID. A waiver of a provision of this chapter by a consumer is void.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER B. REGISTRATION AND DISCLOSURE STATEMENTS

Sec. 393.101. REGISTRATION STATEMENT. (a) Before conducting business in this state, a credit services organization shall register with the secretary of state by filing a statement that:

(1) contains the name and address of:

(A) the organization; and

(B) each person who directly or indirectly owns or controls at least 10 percent of the outstanding shares of stock in the organization; and

(2) fully discloses any litigation or unresolved complaint relating to the operation of the organization filed with a governmental authority of this state or contains a notarized statement that there has been no litigation or unresolved complaint of that type.

(b) The organization shall keep a copy of the registration statement in its files.

(c) The secretary of state may not require an organization to provide information other than information contained in the registration statement.

(d) A registration certificate expires on the first anniversary of its date of issuance. A registered credit services organization may renew a registration certificate by filing a renewal application, in the form prescribed by the secretary of state, and paying the renewal fee.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended

by Acts 1999, 76th Leg., ch. 62, Sec. 7.44(a), eff. Sept. 1, 1999.

Sec. 393.102. UPDATE OF REGISTRATION STATEMENT. A credit services organization shall update information contained in the registration statement not later than the 90th day after the date on which the information changes.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.103. INSPECTION OF REGISTRATION STATEMENT. A credit services organization shall allow a consumer to inspect the registration statement on request.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.104. FILING FEE. The secretary of state may charge a credit services organization a reasonable fee to cover the cost of filing a registration statement or renewal application in an amount not to exceed $100.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.44(a), eff. Sept. 1, 1999.

Sec. 393.105. DISCLOSURE STATEMENT. Before executing a contract with a consumer or receiving valuable consideration from a consumer, a credit services organization shall provide the consumer with a document containing:

(1) a complete and detailed description of the services to be performed by the organization for the consumer and the total cost of those services;

(2) an explanation of the consumer's right to proceed against the surety bond or account obtained under Section 393.302;

(3) the name and address of the surety company that issued the surety bond or the name and address of the depository and the trustee and the account number of the surety account, as appropriate;

(4) a complete and accurate statement of the consumer's right to review information on the consumer maintained in a file by a

consumer reporting agency, as provided by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.);

(5) a statement that information in the consumer's file is available for review:

(A) without charge on request made to the consumer reporting agency not later than the 30th day after the date on which the agency receives notice the consumer has been denied credit; and

(B) for a minimal charge at any other time;

(6) a complete and accurate statement of the consumer's right to dispute directly with a consumer reporting agency the completeness or accuracy of an item contained in the consumer's file maintained by the agency;

(7) a statement that accurate information cannot be permanently removed from the files of a consumer reporting agency;

(8) a complete and accurate statement explaining:

(A) when consumer information becomes obsolete; and

(B) that a consumer reporting agency is prevented from issuing a report containing obsolete information; and

(9) a complete and accurate statement of the availability of nonprofit credit counseling services.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.106. COPY OF DISCLOSURE STATEMENT. A credit services organization shall keep in its files a copy of a document required under Section 393.105, signed by the consumer, acknowledging receipt, until the second anniversary of the date on which the organization provides the document.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER C. CONTRACT FOR SERVICES

Sec. 393.201. FORM AND TERMS OF CONTRACT. (a) Each contract for the purchase of the services of a credit services organization by a consumer must be in writing, dated, and signed by the consumer.

(b) In addition to the notice required by Section 393.202, the contract must:

(1) contain the payment terms, including the total payments to be made by the consumer, whether to the organization or to another

person;

(2) fully describe the services the organization is to perform for the consumer, including each guarantee and each promise of a full or partial refund and the estimated period for performing the services, not to exceed 180 days;

(3) contain the address of the organization's principal place of business; and

(4) contain the name and address of the organization's agent in this state authorized to receive service of process.

(c) A contract with a credit access business, as defined by Section 393.601, for the performance of services described by Section 393.602(a) must, in addition to the requirements of Subsection (b) and Section 393.302:

(1) contain a statement that there is no prepayment penalty;

(2) contain a statement that a credit access business must comply with Chapter 392 and the federal Fair Debt Collection Practices Act (15 U.S.C. Section 1692 et seq.) with respect to an extension of consumer credit described by Section 393.602(a);

(3) contain a statement that a person may not threaten or pursue criminal charges against a consumer related to a check or other debit authorization provided by the consumer as security for a transaction in the absence of forgery, fraud, theft, or other criminal conduct;

(4) contain a statement that a credit access business must comply, to the extent applicable, with 10 U.S.C. Section 987 and any regulations adopted under that law with respect to an extension of consumer credit described by Section 393.602(a);

(5) disclose to the consumer:

(A) the lender from whom the extension of consumer credit is obtained;

(B) the interest paid or to be paid to the lender; and

(C) the specific fees that will be paid to the credit access business for the business's services; and

(6) the name and address of the Office of Consumer Credit Commissioner and the telephone number of the office's consumer helpline.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 1, eff. January 1, 2012.

Sec. 393.202. NOTICE OF CANCELLATION. (a) The contract must conspicuously state the following, in type that is boldfaced, capitalized, underlined, or otherwise distinguished from the surrounding written material and in immediate proximity to the space reserved for the consumer's signature: "You, the buyer, may cancel this contract at any time before midnight of the third day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right."

(b) The contract must have attached two easily detachable copies of a cancellation notice. The notice must be in boldfaced type and in the following form:

"Notice of Cancellation

You may cancel this contract, without any penalty or obligation, within three days after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within 10 days after the date of receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed dated copy of this cancellation notice, or other written notice, to:
(name of seller) at (address of seller)(place of business) not later than midnight (date)
I hereby cancel this transaction.

(date)
(purchaser's signature)"

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.203. ISSUANCE OF CONTRACT AND OTHER DOCUMENTS. A credit services organization shall give to the consumer, when the document is signed, a copy of the completed contract and any other document the organization requires the consumer to sign.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.204. BREACH OF CONTRACT. The breach by a credit

services organization of a contract under this chapter, or of an obligation arising from a contract under this chapter, is a violation of this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER C-1. NOTICE AND DISCLOSURE REQUIREMENTS FOR CERTAIN CREDIT SERVICES ORGANIZATIONS

Sec. 393.221. DEFINITIONS. In this subchapter:

(1) "Credit access business" means a credit services organization that obtains for a consumer or assists a consumer in obtaining an extension of consumer credit in the form of a deferred presentment transaction or a motor vehicle title loan.

(2) "Deferred presentment transaction" has the meaning assigned by Section 341.001. For purposes of this chapter, this definition does not preclude repayment in more than one installment. The term is also referred to as a payday loan.

(3) "Motor vehicle title loan" or "auto title loan" means a loan in which an unencumbered motor vehicle is given as security for the loan. The term does not include a retail installment transaction under Chapter 348 or another loan made to finance the purchase of a motor vehicle.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1301 (H.B. 2592), Sec. 1, eff. January 1, 2012.

Sec. 393.222. POSTING OF FEE SCHEDULE; NOTICES. (a) A credit access business shall post, in a conspicuous location in an area of the business accessible to consumers and on any Internet website, including a social media site, maintained by the credit access business:

(1) a schedule of all fees to be charged for services performed by the credit access business in connection with deferred presentment transactions and motor vehicle title loans, as applicable;

(2) a notice of the name and address of the Office of Consumer Credit Commissioner and the telephone number of the office's consumer helpline; and

(3) a notice that reads as follows:

"An advance of money obtained through a payday loan or auto title loan is not intended to meet long-term financial needs. A payday loan or auto title loan should only be used to meet immediate short-term cash needs. Refinancing the loan rather than paying the debt in full when due will require the payment of additional charges."

(b) The Finance Commission of Texas may adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1301 (H.B. 2592), Sec. 1, eff. January 1, 2012.

Sec. 393.223. CONSUMER TRANSACTION INFORMATION. (a) Before performing services described by Section 393.221(1), a credit access business must provide to a consumer a disclosure adopted by rule of the Finance Commission of Texas that discloses the following in a form prescribed by the commission:

(1) the interest, fees, and annual percentage rates, as applicable, to be charged on a deferred presentment transaction or on a motor vehicle title loan, as applicable, in comparison to interest, fees, and annual percentage rates to be charged on other alternative forms of consumer debt;

(2) the amount of accumulated fees a consumer would incur by renewing or refinancing a deferred presentment transaction or motor vehicle title loan that remains outstanding for a period of two weeks, one month, two months, and three months; and

(3) information regarding the typical pattern of repayment of deferred presentment transactions and motor vehicle title loans.

(b) If a credit access business obtains or assists a consumer in obtaining a motor vehicle title loan, the credit access business shall provide to the consumer a notice warning the consumer that in the event of default the consumer may be required to surrender possession of the motor vehicle to the lender or other person to satisfy the consumer's outstanding obligations under the loan.

(c) The Finance Commission of Texas shall adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1301 (H.B. 2592), Sec. 1, eff. January 1, 2012.

Sec. 393.224. ADMINISTRATIVE PENALTY. The consumer credit commissioner, in accordance with rules adopted by the Finance Commission of Texas, may assess an administrative penalty against a credit access business that knowingly and wilfully violates this subchapter or a rule adopted under this subchapter in the manner provided by Subchapter F, Chapter 14.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1301 (H.B. 2592), Sec. 1, eff. January 1, 2012.

SUBCHAPTER D. PROHIBITIONS AND RESTRICTIONS

Sec. 393.301. REPRESENTATIVE. In this subchapter, a representative of a credit services organization includes:

(1) a salesperson, agent, or other representative of the organization; and

(2) an independent contractor who sells or attempts to sell the services of the organization.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.302. CHARGE OR RECEIPT OF CONSIDERATION BEFORE COMPLETION OF SERVICES. A credit services organization or a representative of the organization may charge or receive from a consumer valuable consideration before completely performing all the services the organization has agreed to perform for the consumer only if the organization has obtained a surety bond for each of its locations or established and maintained a surety account for each of its locations in accordance with Subchapter E.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.43(a), eff. Sept. 1, 1999.

Sec. 393.303. CHARGE OR RECEIPT OF CONSIDERATION FOR REFERRAL. A credit services organization or a representative of the organization may not charge or receive from a consumer valuable consideration solely for referring the consumer to a retail seller who will or may extend to the consumer credit that is substantially the same as that available to the public.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.304. FALSE OR MISLEADING REPRESENTATION OR STATEMENT. A credit services organization or a representative of the organization may not:

(1) make or use a false or misleading representation in the offer or sale of the services of the organization, including:

(A) guaranteeing to "erase bad credit" or words to that effect unless the representation clearly discloses this can be done only if the credit history is inaccurate or obsolete; and

(B) guaranteeing an extension of consumer credit regardless of the person's credit history unless the representation clearly discloses the eligibility requirements for obtaining the extension; or

(2) make, or advise a consumer to make, a statement relating to a consumer's credit worthiness, credit standing, or credit capacity that the person knows, or should know by the exercise of reasonable care, to be false or misleading to a:

(A) consumer reporting agency; or

(B) person who has extended consumer credit to a consumer or to whom a consumer is applying for an extension of consumer credit.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.305. FRAUDULENT OR DECEPTIVE CONDUCT. A credit services organization or a representative of the organization may not directly or indirectly engage in a fraudulent or deceptive act, practice, or course of business relating to the offer or sale of the services of the organization.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.306. ADVERTISING SERVICES WITHOUT FILING REGISTRATION STATEMENT. A credit services organization or a representative of the organization may not advertise the services of the organization if the organization has not filed a registration statement required by Subchapter B.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.307. CAUSING WAIVER PROHIBITED. A credit services organization may not attempt to cause a consumer to waive a right under this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER E. SURETY BOND; SURETY ACCOUNT

Sec. 393.401. SURETY BOND. (a) The surety bond of a credit services organization must be issued by a surety company authorized to do business in this state.

(b) A copy of the bond shall be filed with the secretary of state.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.402. SURETY ACCOUNT. (a) The surety account of a credit services organization must be held in trust at a federally insured bank or savings association located in this state.

(b) The name of the depository and the trustee and the account number of the surety account must be filed with the secretary of state.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.037, eff. Sept. 1, 1999.

Sec. 393.403. AMOUNT OF SURETY BOND OR ACCOUNT. The surety bond or account of a credit services organization must be in the amount of $10,000.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.404. BENEFICIARY OF SURETY BOND OR ACCOUNT. The surety bond or account of a credit services organization must be in favor of:

(1) this state for the benefit of a person damaged by a violation of this chapter; and

(2) a person damaged by a violation of this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.405. CLAIM AGAINST SURETY BOND OR ACCOUNT. (a) A person making a claim against a surety bond or account of a credit services organization for a violation of this chapter may file suit against:

(1) the organization; and

(2) the surety or trustee.

(b) A surety or trustee is liable only for actual damages, reasonable attorney's fees, and court costs awarded under Section 393.503(a).

(c) The aggregate liability of a surety or trustee for an organization's violation of this chapter may not exceed the amount of the surety bond or account.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.406. TERM OF SURETY BOND OR ACCOUNT. The surety bond or account of a credit services organization must be maintained until the second anniversary of the date on which the organization ceases operations.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.407. PAYMENT OF MONEY IN SURETY ACCOUNT TO CREDIT SERVICES ORGANIZATION. (a) A depository may not pay money in a surety account to the credit services organization that established the account or a representative of the organization unless the organization or representative presents a statement issued by the secretary of state indicating that the requirement of Section 393.406 has been satisfied in relation to the account.

(b) The secretary of state may conduct an investigation and require information to be submitted as necessary to enforce this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER F. CRIMINAL PENALTIES AND CIVIL REMEDIES

Sec. 393.501. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this chapter is a Class B misdemeanor.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.502. INJUNCTIVE RELIEF. A district court on the application of the attorney general or a consumer may enjoin a violation of this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.503. DAMAGES. (a) A consumer injured by a violation of this chapter is entitled to recover:

(1) actual damages in an amount not less than the amount the consumer paid the credit services organization;

(2) reasonable attorney's fees; and

(3) court costs.

(b) A consumer who prevails in an action under this section may also be awarded punitive damages.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.504. DECEPTIVE TRADE PRACTICE. A violation of this chapter is a deceptive trade practice actionable under Subchapter E, Chapter 17, Business & Commerce Code.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 393.505. STATUTE OF LIMITATIONS. An action under Section 393.503 or 393.504 must be brought not later than the fourth anniversary of the date on which the contract to which the action relates is executed.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER G. LICENSING AND REGULATION OF CERTAIN CREDIT SERVICES ORGANIZATIONS

Sec. 393.601. DEFINITIONS. In this subchapter:

(1) "Commissioner" means the consumer credit commissioner.

(2) "Credit access business" means a credit services organization that obtains for a consumer or assists a consumer in obtaining an extension of consumer credit in the form of a deferred presentment transaction or a motor vehicle title loan.

(3) "Deferred presentment transaction" has the meaning assigned by Section 341.001. For purposes of this chapter, this definition does not preclude repayment in more than one installment.

(4) "Finance commission" means the Finance Commission of Texas.

(5) "Motor vehicle title loan" means a loan in which an unencumbered motor vehicle is given as security for the loan. The term does not include a retail installment transaction under Chapter 348 or another loan made to finance the purchase of a motor vehicle.

(6) "Office" means the Office of Consumer Credit Commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.602. APPLICABILITY. (a) This subchapter applies only to a credit services organization that, with respect to a consumer who is located in this state at the time of the transaction, obtains for a consumer or assists a consumer in obtaining an extension of consumer credit in the form of:

(1) a deferred presentment transaction; or

(2) a motor vehicle title loan.

(b) A credit access business may assess fees for its services as agreed to between the parties. A credit access business fee may be calculated daily, biweekly, monthly, or on another periodic basis. A credit access business is permitted to charge amounts allowed by other laws, as applicable. A fee may not be charged unless it is disclosed.

(c) A person may not use a device, subterfuge, or pretense to evade the application of this subchapter. A lawful transaction governed under another statute, including Title 1, Business & Commerce Code, does not violate this subsection and may not be considered a device, subterfuge, or pretense to evade the application of this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 82, eff. September 1, 2019.

Sec. 393.603. LICENSE REQUIRED. A credit services organization must obtain a license under this subchapter for each location at which the organization operates as a credit access business in performing services described by Section 393.602(a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.604. APPLICATION FOR LICENSE. (a) An application for a license under this subchapter must:

(1) be under oath;

(2) give the approximate location from which the business is to be conducted;

(3) identify the business's principal parties in interest;

(4) contain the name, physical address, and telephone number of all third-party lender organizations with which the business contracts to provide services described by Section 393.602(a) or from which the business arranges extensions of consumer credit described by Section 393.602(a); and

(5) contain other relevant information that the commissioner requires for the findings required under Section 393.607.

(b) On the filing of one or more license applications, the applicant shall pay to the commissioner an investigation fee of $200. Except for good cause as determined by the finance commission, a separate investigation fee is not required for multiple license

applications.

(c) On the filing of each license application, the applicant shall pay to the commissioner a license fee in an amount determined as provided by Section 14.107.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 83, eff. September 1, 2019.

Sec. 393.605. BOND. (a) If the commissioner requires, an applicant for a license under this subchapter shall file with the application a bond that is:

(1) in an amount satisfactory to the commissioner that does not exceed the lesser of:

(A) $10,000 for the first license and $10,000 for each additional license; or

(B) $2,500,000; and

(2) issued by a surety company qualified to do business as a surety in this state.

(b) The bond must be in favor of this state for the use of this state and the use of a person who has a cause of action under this subchapter against the license holder.

(c) The bond must be conditioned on:

(1) the license holder's faithful performance under this subchapter and rules adopted under this subchapter; and

(2) the payment of all amounts that become due to this state or another person under this subchapter during the period for which the bond is given.

(d) The aggregate liability of a surety to all persons damaged by the license holder's violation of this subchapter may not exceed the amount of the bond.

(e) A credit access business that files a bond under this section is not required to file a bond under Subchapter E.

(f) A credit access business, instead of obtaining a surety bond, may satisfy the requirements of this section by depositing an amount described by Subsection (a)(1) in a surety account held in trust at a federally insured bank or savings association located in

this state. The name of the depository, trustee, and account number of the surety account must be filed with the office.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 84, eff. September 1, 2019.

Sec. 393.606. INVESTIGATION OF APPLICATION. On the filing of an application and a bond, if required under Section 393.605, and on payment of the required fees, the commissioner shall conduct an investigation to determine whether to issue the license.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.607. APPROVAL OR DENIAL OF APPLICATION. (a) The commissioner shall approve the application and issue to the applicant a license to operate as a credit access business for purposes of engaging in the activity to which this subchapter applies if the commissioner finds that:

(1) the financial responsibility, experience, character, and general fitness of the applicant are sufficient to:

(A) command the confidence of the public; and

(B) warrant the belief that the business will be operated lawfully and fairly, within the purposes of this subchapter; and

(2) the applicant has net assets of at least $25,000 available for the operation of the business as determined in accordance with Section 393.611.

(b) If the commissioner does not find the eligibility requirements of Subsection (a) have been met, the commissioner shall notify the applicant.

(c) If an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (b), the applicant is entitled to a hearing not later than the 30th day after the date of the request.

(d) The commissioner shall approve or deny the application not

later than the 30th day after the date of the filing of a completed application with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. The commissioner and the applicant may agree to a later date in writing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.608. DISPOSITION OF FEES ON DENIAL OF APPLICATION. If the commissioner denies the application, the commissioner shall retain the investigation fee and shall return to the applicant the license fee submitted with the application.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.6085. LICENSE TERM. A license issued under this chapter is valid for the period prescribed by finance commission rule adopted under Section 14.112.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 85, eff. September 1, 2019.

Sec. 393.609. NAME AND PLACE OF LICENSE. (a) A license issued under this subchapter must state:

(1) the name of the license holder; and

(2) the address of the office from which the business is to be conducted, except as provided by Subsection (c).

(b) A license holder may not conduct business under this subchapter under a name other than the name stated on the license.

(c) A license holder may not conduct business at a location other than the address stated on the license, except that a license holder:

(1) is not required to have an office in this state; and

(2) may operate using e-commerce methods, including the Internet.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.610. LICENSE DISPLAY. A license holder shall display a license at the place of business provided on the license. With respect to business conducted through the Internet, this requirement may be satisfied by displaying the license on the business's Internet website.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.611. MINIMUM ASSETS FOR LICENSE. A license holder shall maintain net assets used or readily available for use in conducting the business of each of the offices for which a license is held under this subchapter, in an amount that is not less than the lesser of:

(1) $25,000 for each office; or

(2) $2,500,000 in the aggregate.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.6115. GROUNDS FOR REFUSAL TO RENEW. The commissioner may refuse to renew the license of a credit access business who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 85, eff. September 1, 2019.

Sec. 393.612. LICENSE FEE. Not later than the 30th day before the date the license expires, a license holder shall pay to the commissioner for each license held a fee in an amount determined as provided by Section 14.107.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2,

eff. January 1, 2012.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 86, eff. September 1, 2019.

Sec. 393.613. EXPIRATION OF LICENSE ON FAILURE TO PAY FEE. If the fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on that day.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 87, eff. September 1, 2019.

Sec. 393.614. LICENSE SUSPENSION OR REVOCATION. (a) After notice and opportunity for a hearing, the commissioner may suspend or revoke a license if the commissioner finds that:

(1) the license holder failed to pay the license fee, an examination fee, an investigation fee, or another charge imposed by the commissioner under this subchapter;

(2) the license holder, knowingly or without the exercise of due care, violated this chapter or a rule adopted or order issued under this chapter; or

(3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application.

(b) If in a three-year period the commissioner suspends or revokes under this section the licenses of five or more credit access businesses owned or controlled by the same person, including a corporation that owns multiple businesses, the commissioner may suspend or revoke the licenses of all credit access businesses owned or controlled by that person.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 88, eff. September 1, 2019.

Sec. 393.615. LICENSE SUSPENSION OR REVOCATION FILED WITH PUBLIC RECORDS. The decision of the commissioner on the suspension or revocation of a license and the evidence considered by the commissioner in making the decision shall be filed in the public records of the commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.616. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE OF NEW LICENSE AFTER REVOCATION. The commissioner may reinstate a suspended license or issue a new license on application to a person whose license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the commissioner's denial of an original application for the license.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.617. SURRENDER OF LICENSE. A license holder may surrender a license issued under this subchapter by delivering to the commissioner:

(1) the license; and

(2) a written notice of the license's surrender.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.618. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR SURRENDER. (a) The suspension, revocation, or surrender of a license issued under this subchapter does not affect the obligation of a contract between the license holder and a consumer entered into before the revocation, suspension, or surrender.

(b) Surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.619. MOVING AN OFFICE. (a) A license holder shall give written notice to the commissioner before the 30th day before the date the license holder moves an office from the location provided on the license.

(b) The commissioner shall amend a license holder's license accordingly.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.620. TRANSFER OR ASSIGNMENT OF LICENSE. A license may be transferred or assigned only with the approval of the commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.621. ADMINISTRATION. The office shall administer this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.622. RULES. (a) The finance commission may:

(1) adopt rules necessary to enforce and administer this subchapter;

(2) adopt rules with respect to the quarterly reporting by a credit access business licensed under this subchapter of summary business information relating to extensions of consumer credit described by Section 393.602(a); and

(3) adopt rules with respect to periodic examination by the

office relating to extensions of consumer credit described by Section 393.602(a), including rules related to charges for defraying the reasonable cost of conducting the examinations.

(b) The finance commission may adopt rules under this section to allow the commissioner to review, as part of a periodic examination, any relevant contracts between the credit access business and the third-party lender organizations with which the credit access business contracts to provide services described by Section 393.602(a) or from which the business arranges extensions of consumer credit described by Section 393.602(a). A contract or information obtained by the commissioner under this section is considered proprietary and confidential to the respective parties to the contract, and is not subject to disclosure under Chapter 552, Government Code.

(c) Nothing in Section 393.201(c) or Sections 393.601-393.628 grants authority to the finance commission or the Office of Consumer Credit Commissioner to establish a limit on the fees charged by a credit access business.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.623. PROVIDING OR ADVERTISING SERVICES WITHOUT LICENSE PROHIBITED. A credit access business or a representative of the business may not provide or advertise the services of the business if the business is not licensed under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.624. RESTRICTIONS ON OFF-SITE ADVERTISING. (a) A credit access business may not advertise on the premises of a nursing facility, assisted living facility, group home, intermediate care facility for persons with mental retardation, or other similar facility subject to regulation by the Department of Aging and Disability Services.

(b) The finance commission may adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.625. MILITARY BORROWERS. An extension of consumer credit described by Section 393.602(a) that is obtained by a credit access business for a member of the United States military or a dependent of a member of the United States military or that the business assisted that person in obtaining must comply with 10 U.S.C. Section 987 and any regulations adopted under that law, to the extent applicable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.626. DEBT COLLECTION PRACTICES. A violation of Chapter 392 by a credit access business with respect to an extension of consumer credit described by Section 393.602(a) constitutes a violation of this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.627. QUARTERLY REPORT TO COMMISSIONER. A credit access business shall file a quarterly report with the commissioner on a form prescribed by the commissioner that provides the following information relating to extensions of consumer credit described by Section 393.602(a) during the preceding quarter:

(1) the number of consumers for whom the business obtained or assisted in obtaining those extensions of consumer credit;

(2) the number of those extensions of consumer credit obtained by the business or that the business assisted consumers in obtaining;

(3) the number of refinancing transactions of the extensions of consumer credit described by Subdivision (2);

(4) the number of consumers refinancing the extensions of consumer credit described by Subdivision (2);

(5) the number of consumers refinancing more than once the extensions of consumer credit described by Subdivision (2);

(6) the average amount of the extensions of consumer credit described by Subdivision (2);

(7) the total amount of fees charged by the business for the activities described by Subdivision (1);

(8) the number of vehicles surrendered or repossessed under the terms of an extension of consumer credit in the form of a motor vehicle title loan obtained by the business or that the business assisted a consumer in obtaining;

(9) the mean, median, and mode of the number of extensions of consumer credit obtained by consumers as a result of entering into the extensions of consumer credit described by Subdivision (2); and

(10) any related information the commissioner determines necessary.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

Sec. 393.628. TEXAS FINANCIAL EDUCATION ENDOWMENT. (a) As part of the licensing fee and procedures described under this subchapter, each credit access business or license holder shall pay to the commissioner an annual assessment to improve consumer credit, financial education, and asset-building opportunities in this state. The annual assessment may not exceed $200 for each license as specified by the finance commission.

(b) The commissioner shall remit to the comptroller amounts received under Subsection (a) for deposit in an interest-bearing deposit account in the Texas Treasury Safekeeping Trust Company. Money in the account may be spent by the finance commission only for the purposes provided by this section. Amounts in the account may be invested and reinvested in the same manner as funds of the Employees Retirement System of Texas, and the interest from those investments shall be deposited to the credit of the account.

(c) The Texas Financial Education Endowment shall be administered by the finance commission to support statewide financial education and consumer credit building activities and programs, including:

(1) production and dissemination of approved financial education materials at licensed locations;

(2) advertising, marketing, and public awareness campaigns

to improve the credit profiles and credit scores of consumers in this state;

(3) school and youth-based financial literacy and capability;

(4) credit building and credit repair;

(5) financial coaching and consumer counseling;

(6) bank account enrollment and incentives for personal savings; and

(7) other consumer financial education and asset-building initiatives as considered appropriate by the finance commission.

(d) In implementing this section, the finance commission may solicit gifts, grants, and donations for this purpose.

(e) The finance commission may partner with other state agencies and entities to implement this section.

(f) The finance commission shall adopt rules to administer this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1302 (H.B. 2594), Sec. 2, eff. January 1, 2012.

CHAPTER 394. DEBTOR ASSISTANCE

SUBCHAPTER A. DEBT COUNSELING AND EDUCATION

Sec. 394.001. DUTIES OF COMMISSIONER. The consumer credit commissioner shall provide advice and assistance to:

(1) encourage the establishment and operation of voluntary nonprofit debt-counseling services for residents of this state; and

(2) coordinate, encourage, and aid public and private agencies, organizations and groups, and consumer credit institutions in the development and operation of voluntary education programs to promote the prudent and beneficial use of consumer credit by residents of this state.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER C. CONSUMER DEBT MANAGEMENT SERVICES

Sec. 394.201. PURPOSE; CONSTRUCTION. (a) The purpose of this subchapter is to protect consumers who contract for services with debt management services providers.

(b) This subchapter shall be liberally construed to accomplish

its purpose.

Added by Acts 2005, 79th Leg., Ch. 336 (S.B. 1112), Sec. 1, eff. September 1, 2005.

Sec. 394.202. DEFINITIONS. In this subchapter:

(1) "Advertising" means information about a provider or about the provider's debt management services, communicated in writing or orally to an individual consumer or the public by telephone, television, Internet, radio, or other electronic medium, or by written material sent by mail, posted publicly, or posted at the provider's business location.

(2) "Certified counselor" means an individual who:

(A) is certified as a debt management counselor by an independent accreditation organization; or

(B) if the individual has been employed for less than 12 months, is in the process of being certified as a debt management counselor by an independent accreditation organization.

(3) "Commissioner" means the consumer credit commissioner.

(3-a) "Concession" means assent to repayment of a debt on terms more favorable to a consumer than the terms of the agreement under which the consumer became indebted to the creditor.

(4) "Consumer" means an individual who resides in this state and seeks a debt management service or enters a debt management service agreement.

(5) "Creditor" means a person to whom a person owes money.

(6) "Debt management service" means a service in which a provider obtains or seeks to obtain a concession from one or more creditors on behalf of a consumer.

(7) "Debt management service agreement" means a written agreement between a provider and a consumer for the performance of a debt management service.

(8) "Finance commission" means the Finance Commission of Texas.

(9) "Person" means an individual, partnership, corporation, limited liability company, association, or organization.

(9-a) "Principal amount of the debt" means the amount of a debt owed by a consumer at the time the consumer enters into a debt management service agreement.

(10) "Provider" means a person that acts as an intermediary between a consumer and one or more creditors and that provides or offers to provide a debt management service to a consumer in this state.

(11) "Secured debt" means a debt for which a creditor has a mortgage, lien, or security interest in collateral.

(11-a) "Settlement fee" means a charge that is imposed on or paid by a consumer in connection with a debt management service agreement after a creditor agrees to accept in full satisfaction of a debt an amount that is less than the principal amount of the debt.

(12) "Trust account" means an account that is:

(A) established in a federally insured financial institution;

(B) separate from any account of the debt management service provider;

(C) designated as a "trust account" or other appropriate designation indicating that the money in the account is not money of the provider or its officers, employees, or agents;

(D) unavailable to creditors of the provider; and

(E) used exclusively to hold money paid by consumers to the provider for disbursement to creditors of the consumers and to the provider for the disbursement of fees and contributions earned and agreed to in advance.

(13) "Unsecured debt" means a debt for which a creditor does not have collateral.

Added by Acts 2005, 79th Leg., Ch. 336 (S.B. 1112), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 368 (S.B. 141), Sec. 1, eff. September 1, 2011.

Sec. 394.203. APPLICABILITY. (a) Except as otherwise provided by this subchapter, this subchapter applies to a provider regardless of whether the provider charges a fee or receives consideration for a service.

(b) The business of providing debt management services is conducted in this state if the debt management services provider solicits or contracts with consumers located in this state.

(c) This subchapter does not apply to:

(1) an attorney licensed to practice in this state, unless the attorney holds the attorney's self out to the public as a provider or is employed, affiliated with, or otherwise working on behalf of a provider;

(2) a title insurance or abstract company employee or agent, or other person legally authorized to engage in escrow business in the state, only while engaged in the escrow business;

(3) a judicial officer or person acting under a court order;

(4) a person who has legal authority under federal or state law to act as a representative payee for a consumer, only to the extent the person is paying bills or other debts on behalf of that consumer;

(5) a person who pays bills or other debts owed by a consumer and on behalf of a consumer, if the money used to make the payments belongs exclusively to the consumer and the person does not initiate any contact with individual creditors of the consumer to compromise a debt, arrange a new payment schedule, or otherwise change the terms of the debt; or

(6) a financial institution, as defined by Section 201.101.

(d) The following are not debt management services for purposes of this subchapter:

(1) an extension of credit, including consolidation or refinance of a loan; and

(2) bankruptcy services provided by an attorney licensed to practice in this state.

(e) This subchapter applies to a person who seeks to evade its applicability by any device, subterfuge, or pretense.

Added by Acts 2005, 79th Leg., Ch. 336 (S.B. 1112), Sec. 1, eff. September 1, 2005.

Sec. 394.204. REGISTRATION. (a) A person, regardless of whether located in this state, may not provide a debt management service to a consumer in this state unless the person is registered with the commissioner.

(b) A registration issued under this section is valid for the period prescribed by finance commission rule adopted under Section

14.112.

(c) An application for an initial registration must be in a form prescribed by the commissioner and accompanied by:

(1) the appropriate fees set by the finance commission in an amount necessary to recover the costs of administering this subchapter;

(2) the surety bond or insurance required by Section 394.206;

(3) the applicant's name, the applicant's principal business address and telephone number, all other business addresses of the applicant in this state, and the applicant's electronic mail address and Internet website address;

(4) all names under which the applicant conducts business;

(5) the address of each location in this state at which the applicant will provide debt management services, or if the applicant will have no such location, a statement to that effect;

(6) the name and home address of each officer and director of the applicant and each person that holds at least a 10 percent ownership interest in the applicant;

(7) if the applicant is a nonprofit or tax exempt organization, a detailed description of the ownership interest of each officer, director, agent, or employee of the applicant, and any member of the immediate family of an officer, director, agent, or employee of the applicant, in a for-profit affiliate or subsidiary of the applicant or in any other for-profit business entity that provides services to the applicant or to a consumer in relation to the applicant's debt management business; and

(8) any other information that the commissioner requires.

(d) An officer or employee of a person registered under this subchapter is not required to be separately registered.

(e) Unless the commissioner notifies an applicant that a longer period is necessary, the commissioner shall approve or deny an initial registration not later than the 60th day after the date on which the completed application, including all required documents and payments, is filed. The commissioner shall inform the applicant in writing of the reason for denial.

(f) Subject to Subsection (j-1), a person may renew a registration by paying the appropriate fee and completing all required documents.

(g) Subject to Section 14.112, the finance commission by rule

may establish procedures to facilitate the registration and collection of fees under this section.

(h) The commissioner may refuse an initial application if the application contains errors or incomplete information. An application is incomplete if it does not include all of the information required by this section and Section 394.205.

(i) The commissioner may deny an initial application if:

(1) the applicant or any principal of the applicant has been convicted of a crime or found civilly liable for an offense involving moral turpitude, including forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other similar offense or violation;

(2) the registration of the applicant or any principal of the applicant has been revoked or suspended in this state or another state, unless the applicant provides information that the commissioner finds sufficient to show that the grounds for the previous revocation or suspension no longer exist and any problem cited in the previous revocation has been corrected; or

(3) the commissioner, based on specific evidence, finds that the applicant does not warrant the belief that the business will be operated lawfully and fairly and within the provisions and purposes of this subchapter.

(j) On written request, the applicant is entitled to a hearing, pursuant to Chapter 2001, Government Code, on the question of the applicant's qualifications for initial registration if the commissioner has notified the applicant in writing that the initial application has been denied. A request for a hearing may not be made after the 30th day after the date the commissioner mails a notice to the applicant stating that the application has been denied and stating the reasons for the denial.

(j-1) The commissioner may refuse to renew the registration of a person who fails to comply with an order issued by the commissioner to enforce this chapter.

(k) In addition to the power to refuse an initial application as specified in this section, the commissioner may suspend or revoke a provider's registration after notice and opportunity for a hearing if the commissioner finds that any of the following conditions are met:

(1) a fact or condition exists that, if it had existed when the provider applied for registration, would have been grounds for

denying registration;

(2) a fact or condition exists that the commissioner was not aware of when the provider applied for registration and would have been grounds for denying registration;

(3) the provider violates this subchapter or rule or order of the commissioner under this subchapter;

(4) the provider is insolvent;

(5) the provider refuses to permit the commissioner to make an examination authorized by this subchapter;

(6) the provider fails to respond within a reasonable time and in an appropriate manner to communications from the commissioner;

(7) the provider has received money from or on behalf of a consumer for disbursement to a creditor under a debt management plan that provides for regular periodic payments to creditors in full repayment of the principal amount of the debts and the provider has failed to disburse money to the creditor on behalf of the consumer within a reasonable time, normally 30 days;

(8) the commissioner determines that the provider's trust account is not materially in balance with and reconciled to the consumer's account; or

(9) the provider fails to warrant the belief that the business will be operated lawfully and fairly and within the provisions and purposes of this subchapter.

(l) The commissioner's order revoking a registration must include appropriate provisions to transfer existing clients of the provider to one or more registered providers to ensure the continued servicing of the clients' accounts.

(m) The commissioner shall maintain a list of registered providers and make the list available to interested persons and to the public.

Added by Acts 2005, 79th Leg., Ch. 336 (S.B. 1112), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 48 (S.B. 884), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 368 (S.B. 141), Sec. 2, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 89, eff. September 1, 2019.

Sec. 394.205. RECORDS. (a) A provider shall keep and use books, accounts, and other records that will enable the commissioner to determine if the provider is complying with this subchapter and maintain any other records as required by the commissioner. The commissioner may examine the records at any reasonable time. The records must be kept for at least three years after the date of the last service on a consumer's debt management plan.

(b) Each provider shall file a report with the commissioner at each renewal of the provider's registration. The report must at a minimum disclose in detail and under appropriate headings:

(1) the assets and liabilities of the provider at the beginning and end of the period, if the provider is a nonprofit or tax exempt organization;

(2) the total number of debt management plans the provider has initiated on behalf of consumers in this state during that period; and

(3) records of total and average fees charged to consumers, including all voluntary contributions received from consumers.

(c) The reports must be verified by the oath or affirmation of the owner, manager, president, chief executive officer, or chairman of the board of directors of the provider.

(d) A provider shall file a blank copy of the agreement described in Section 394.209 and blank copies of the written information required in Section 394.208(a) with the commissioner accompanying the initial registration and each renewal of registration.

(e) The commissioner shall make the information provided under this section available to interested parties and to the public.

Added by Acts 2005, 79th Leg., Ch. 336 (S.B. 1112), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 48 (S.B. 884), Sec. 2, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 90, eff. September 1, 2019.

Sec. 394.206. BOND; INSURANCE. (a) A provider shall, at the time the provider files an initial or renewal registration application with the commissioner, file:

(1) a surety bond; or

(2) evidence that the provider maintains an insurance policy in a form approved by the commissioner.

(b) The bond or insurance must:

(1) run concurrently with the period of registration;

(2) be available to pay damages and penalties to consumers directly harmed by a violation of this subchapter;

(3) be in favor of this state for the use of this state and the use of a person who has a cause of action under this subchapter against the provider;

(4) if a bond:

(A) be in an amount equal to the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond, or in the case of an initial application, in an amount determined by the commissioner, but not less than $25,000 or more than $100,000, if the provider receives and holds money paid by or on behalf of a consumer for disbursement to the consumer's creditors; or

(B) be in the amount of $50,000, if the provider does not receive and hold money paid by or on behalf of a consumer for disbursement to the consumer's creditors;

(5) if an insurance policy:

(A) provide coverage for professional liability, employee dishonesty, depositor's forgery, and computer fraud in an amount not less than $100,000;

(B) be issued by a company rated at least "A-" or its equivalent by a nationally recognized rating organization; and

(C) provide for 30 days advance written notice of termination of the policy to be provided to the commissioner;

(6) be issued by a bonding, surety, or insurance company that is authorized to do business in the state; and

(7) be conditioned on the provider and its agents complying with all state and federal laws, including regulations, governing the business of debt management services.

(c) In lieu of a bond or insurance, the finance commission by rule may establish alternative financial requirements to provide substantially equivalent protection to pay damages and penalties to

consumers directly harmed by a violation under this subchapter.

(d) The commissioner may adjust the amount of the provider's bond or insurance only when the provider applies for renewal of registration and requests a review of the bond or insurance amount.

Added by Acts 2005, 79th Leg., Ch. 336 (S.B. 1112), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 368 (S.B. 141), Sec. 3, eff. September 1, 2011.

Sec. 394.207. ADVERTISING. A provider may not engage in false or deceptive advertising.

Added by Acts 2005, 79th Leg., Ch. 336 (S.B. 1112), Sec. 1, eff. September 1, 2005.

Sec. 394.208. REQUIRED ACTIONS BY PROVIDER. (a) A provider may not enroll a consumer in a debt management plan unless, through the services of a counselor certified by an independent accreditation organization, the provider:

(1) has provided the consumer individualized counseling and educational information that at a minimum addresses the topics of managing household finances, managing credit and debt, and budgeting;

(2) has prepared an individualized financial analysis and an initial debt management plan for the consumer's debts with specific recommendations regarding actions the consumer should take;

(3) has determined that the consumer has a reasonable ability to make payments under the proposed debt management plan based on the information provided by the consumer;

(4) if the proposed debt management plan does not provide for a reduction of principal as a concession:

(A) has a reasonable expectation, provided that the consumer has provided accurate information to the provider, that each creditor of the consumer listed as a participating creditor in the plan will accept payment of the consumer's debts as provided in the initial plan; and

(B) has prepared, for all creditors identified by the consumer or identified through additional investigation by the

provider, a list, which must be provided to the consumer in a form the consumer may keep, of the creditors that the provider reasonably expects to participate in the plan; and

(5) has provided a written document to the consumer in a form the consumer may keep that clearly and conspicuously contains the following statements:

(A) that debt management services are not suitable for all consumers and that consumers may request information about other ways, including bankruptcy, to deal with indebtedness;

(B) that if the provider is a nonprofit or tax-exempt organization the provider cannot require donations or contributions; and

(C) if applicable, that some of the provider's funding comes from contributions from creditors who participate in debt management plans, except that a provider may substitute for "some" the actual percentage of creditor contributions it received during the most recent reporting period.

(b) If the provider discusses its services with a consumer primarily in a language other than English, the provider must provide the debt management agreement in that language.

(c) A consumer must give at least 10 days' notice to the provider to cancel a debt management services agreement. The provider must cancel a debt management services agreement within 10 days after the date the provider receives the notice from the consumer. The provider must continue making disbursements to the consumer's creditors if money has been paid to the provider under the agreement until the expiration of the 10-day period, unless otherwise agreed in writing by the consumer and the provider.

(d) A provider may provide the information required by Subsections (a)(2), (4)(B), and (5) through its Internet website if the provider:

(1) has complied with the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.);

(2) informs the consumer that, on electronic, telephonic, or written request the provider will make available to the consumer a paper copy or copies; and

(3) discloses on its Internet website:

(A) the provider's name and each name under which it does business;

(B) the provider's principal business address and

telephone number; and

(C) the names of the provider's principal officers.

(e) A provider, including a provider that does business only or principally through the Internet, shall maintain a telephone system staffed at a level that reasonably permits a consumer to access a counselor during ordinary business hours.

(f) A provider who receives and disburses money to creditors on behalf of consumers for debt management services shall provide each consumer to whom those services were provided a written report accounting for:

(1) the amount of money received from the consumer since the last report;

(2) the amount and date of each disbursement made on the consumer's behalf to each creditor listed in the agreement since the last report;

(3) any amount deducted from amounts received from the consumer; and

(4) any amount held in reserve.

(g) The provider shall provide the report under Subsection (f):

(1) at least once each calendar quarter; and

(2) not later than the 10th business day after the date of a request by a consumer.

Added by Acts 2005, 79th Leg., Ch. 336 (S.B. 1112), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 48 (S.B. 884), Sec. 3, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 368 (S.B. 141), Sec. 4, eff. September 1, 2011.

Sec. 394.209. WRITTEN DEBT MANAGEMENT SERVICES AGREEMENT. (a) A debt management services provider may not prepare a debt management services agreement before the provider has fully complied with Sections 394.208(a) and (b).

(b) Each debt management services agreement must:

(1) be dated and signed by the consumer;

(2) include the name and address of the consumer and the name, address, and telephone number of the provider;

(3) describe the services to be provided;

(4) state all fees, individually itemized, to be paid by the consumer;

(5) if the proposed debt management plan does not provide for a reduction of principal as a concession, list in the agreement or accompanying document, to the extent the information is available to the provider at the time the agreement is executed, each participating creditor of the consumer to which payments will be made and, based on information provided by the consumer, the amount owed to each creditor and the schedule of payments the consumer will be required to make to the creditor, including the amount and date on which each payment will be due;

(6) state the existence of a surety bond or insurance for consumer claims;

(7) state that establishment of a debt management plan may impact the consumer's credit rating and credit score either favorably or unfavorably, depending on creditor policies and the consumer's payment history before and during participation in the debt management plan; and

(8) state that either party may cancel the agreement without penalty at any time on 10 days' notice and that a consumer who cancels an agreement is entitled to a refund of all money that the consumer has paid to the provider that has not been disbursed.

(c) A debt management services agreement may contain a voluntary consumer arbitration provision or a voluntary mediation provision.

(d) A provider may deliver the debt management services agreement through the Internet if the provider:

(1) has complied with the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.);

(2) sends the consumer a paper copy of the agreement not later than the seventh day after the date of a request by a consumer to do so; and

(3) discloses on a prominent page of its Internet website:

(A) the provider's name and each name under which it does business;

(B) the provider's principal business address and telephone number; and

(C) the names of the provider's principal officers.

(e) If the provider discusses its services or negotiates with a

consumer primarily in a language other than English, the provider may not begin performance of a debt management plan until the provider and consumer sign a copy of the written agreement, provided by the debt management services provider, in that language and a copy is made available to the consumer.

Added by Acts 2005, 79th Leg., Ch. 336 (S.B. 1112), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 368 (S.B. 141), Sec. 5, eff. September 1, 2011.

Sec. 394.2095. CANCELLATION OF AGREEMENT BY EITHER PROVIDER OR CONSUMER. If a provider or a consumer cancels a debt management service agreement, the provider shall immediately return to the consumer:

(1) any money of the consumer held in trust by the provider for the consumer's benefit; and

(2) 65 percent of any portion of the account set-up fee received under Section 394.210(g)(1) that has not been credited against settlement fees.

Added by Acts 2011, 82nd Leg., R.S., Ch. 368 (S.B. 141), Sec. 6, eff. September 1, 2011.

Sec. 394.210. PERMITTED FEES. (a) With respect to the provision of a debt management plan service, a provider may not impose a fee or other charge on a consumer, or receive payment from a consumer or other person on behalf of a consumer, except as allowed under this section.

(b) For the purposes of this section, fees or charges include both voluntary contributions and any other fees charged to or collected from a consumer or on behalf of the consumer.

(c) A provider may not impose fees or other charges on a consumer or receive payment for debt management services until the consumer has entered into a debt management service agreement with the provider that complies with Section 394.209.

(d) If a consumer enters into a debt management service agreement with a provider, the provider may not impose a fee or other

charge for debt counseling, education services, or similar services except as otherwise authorized by this section. The commissioner may authorize a provider to charge a fee based on the nature and extent of the counseling, education services, or other similar services furnished by the provider.

(e) Subsections (f)-(j) apply subject to an adjustment made under Section 394.2101.

(f) If a consumer is enrolled in a debt management plan that provides for a reduction of finance charges or fees for late payment, default, or delinquency as a concession from creditors, the provider may charge:

(1) a fee not to exceed $100 for debt consultation or education services, including obtaining a credit report, setting up an account, and other similar services; and

(2) a monthly service fee, not to exceed the lesser of:

(A) $10 multiplied by the number of accounts remaining in the plan on the day of the month the fee is assessed; or

(B) $50.

(g) If a consumer is enrolled in a debt management plan that provides for settlement of debts for amounts that are less than the principal amounts of the debts as a concession from creditors, the provider may charge:

(1) a fee for debt consultation or education services, including obtaining a credit report, setting up an account, and other similar services, in an amount not to exceed the lesser of $400 or four percent of the total amount of the outstanding debt included in the plan at the time the plan is established; and

(2) a monthly service fee, not to exceed the lesser of:

(A) $10 multiplied by the number of accounts remaining in the plan on the day of the month the fee is assessed; or

(B) $50; and

(3) one of the following:

(A) with respect to a debt management service agreement in which a flat fee is charged based on the total amount of debt that is included in a debt management plan, the total aggregate amount of fees charged to a consumer under this subchapter, including fees charged under Subdivisions (1) and (2), may not exceed 17 percent of the total principal amount of debt included in the debt management plan; or

(B) with respect to a debt management service agreement

in which fees are computed as a percentage of the amount saved by a consumer as a result of a concession, in addition to fees charged under Subdivisions (1) and (2), a settlement fee may not exceed 30 percent of the excess of the outstanding amount of each debt over the amount actually paid to the creditor, as computed at the time of settlement.

(h) Settlement fees authorized under Subsection (g)(3)(B) may be charged only as debts are settled, and the total aggregate amount of fees charged to a consumer under this subchapter, including fees charged under Subsections (g)(1) and (2), may not exceed 20 percent of the principal amount of debt included in the debt management plan.

(i) The flat fee authorized under this subchapter shall be assessed in equal monthly payments for a period that is at least as long as the term of the debt management plan, as estimated when the debt management plan is established, unless:

(1) the fee payment period is voluntarily accelerated by the consumer in an addendum to the agreement or other separate agreement; and

(2) offers of settlement by creditors have been obtained on at least half of the outstanding debt included in the debt management plan.

(j) If a consumer is enrolled in a debt management plan that provides for the settlement of debts for amounts that are less than the principal amount of the debts as a concession from creditors, if fees for debt management services will not be charged or collected until the time a settlement agreement is reached with a creditor, and if at least one payment has been made toward the settlement agreement by or on behalf of the consumer, the fee limitations in Subsection (g) do not apply and the provider may charge reasonable settlement fees. The fee with respect to each debt included in the plan must:

(1) bear the same proportional relationship to the total fee for settling all debts included in the debt management plan as the principal amount of the particular debt bears to the total principal amount of the debt included in the plan; or

(2) be a percentage of the amount saved as a result of the settlement, determined as the difference between the principal amount of a debt and the amount actually paid to satisfy the debt. The percentage charged cannot change from one debt to another.

(k) A provider may impose fees or other charges or receive fees or payment under only one of Subsection (f), (g), or (j).

(l) If a consumer does not enter into a debt management service agreement with a provider, the provider may receive payment for debt counseling or education services provided to the consumer in an amount not to exceed $100 or a greater amount, on approval of the commissioner. The commissioner may approve a fee in an amount greater than $100 if the nature and extent of the educational and counseling services warrant the greater amount.

(m) If, before the expiration of the 90th day after the date debt counseling or education services are completed or canceled, a consumer enters into a debt management service agreement with a provider, the provider shall refund to the consumer any payments received under Subsection (l).

(n) Subject to an adjustment made under Section 394.2101, if any payment made by a consumer to a provider under this subchapter is dishonored, the provider may impose a reasonable charge on the consumer not to exceed the lesser of $25 or an amount permitted by a law other than this chapter.

Added by Acts 2005, 79th Leg., Ch. 336 (S.B. 1112), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 48 (S.B. 884), Sec. 4, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 368 (S.B. 141), Sec. 7, eff. September 1, 2011.

Sec. 394.2101. ADJUSTMENT OF AMOUNTS OF FEES OR OTHER CHARGES. (a) The commissioner shall compute and publish the dollar amounts of fees or other charges in amounts different from the amounts of fees or other charges specified in Section 394.210 to reflect inflation, as measured by the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor or, if that index is not available, another index adopted by finance commission rule. The commissioner shall adopt a base year and adjust the dollar amounts, effective on July 1 of each year, if the change in the index from the base year, as of December 31 of the preceding year, is at least 10 percent. The dollar amounts must be rounded to the nearest $100, except that the amounts of the fees and other charges specified in Section 394.210 must be rounded

to the nearest dollar.

(b) The commissioner shall notify registered providers of any change in dollar amounts made under Subsection (a) and make that information available to the public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 368 (S.B. 141), Sec. 8, eff. September 1, 2011.

Sec. 394.211. TRUST ACCOUNT. (a) A provider must use a trust account for the management of all money paid by or on behalf of a consumer and received by the provider for disbursement to the consumer's creditor. A provider may not commingle the money in a trust account established for the benefit of consumers with any operating funds of the provider. A provider shall exercise due care to appropriately manage the funds in the trust account.

(b) The trust account must at all times be materially in balance with and reconciled to the consumers' accounts. Failure to maintain that balance is cause for a summary suspension of registration under Section 394.204.

(c) If a trust account does not contain sufficient money to cover the aggregate consumer balances, and the provider has not corrected the deficiency within 48 hours of discovery, the provider shall notify the commissioner by telephone, facsimile, electronic mail, or other method approved by the commissioner, and provide written notice including a description of the remedial action taken.

Added by Acts 2005, 79th Leg., Ch. 336 (S.B. 1112), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 368 (S.B. 141), Sec. 9, eff. September 1, 2011.

Sec. 394.212. PROHIBITED ACTS AND PRACTICES. (a) A provider may not:

(1) purchase a debt or obligation of a consumer;

(2) receive or charge a fee in the form of a promissory note or other negotiable instrument other than a check or a draft;

(3) lend money or provide credit to the consumer;

(4) obtain a mortgage or other security interest in

property owned by a consumer;

(5) engage in business with an entity described by Section 394.204(c)(3) without prior consent of the commissioner, except that unless denied, consent is considered granted 30 days after the date the provider notifies the commissioner of the intent to engage in business with an organization described by Section 394.204(c)(3);

(6) offer, pay, or give a gift, bonus, premium, reward, or other compensation to a person for entering into a debt management services agreement;

(7) represent that the provider is authorized or competent to furnish legal advice or perform legal services unless supervised by an attorney as required by State Bar of Texas rules;

(8) use an unconscionable means to obtain a contract with a consumer;

(9) engage in an unfair, deceptive, or unconscionable act or practice in connection with a service provided to a consumer; or

(10) require or attempt to require payment of an amount that the provider states, discloses, or advertises to be a voluntary contribution from the consumer.

(b) A provider does not have a claim:

(1) for breach of contract against a consumer who cancels an agreement pursuant to this subchapter; or

(2) in restitution with respect to an agreement that is void under this subchapter.

(c) A provider may not include any of the following provisions in a disclosure related to debt management services or in a debt management services agreement:

(1) a confession of judgment clause;

(2) a waiver of the right to a jury trial, if applicable, in an action brought by or against a consumer;

(3) an assignment of or order for payment of wages or other compensation for services; or

(4) a waiver of a provision of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 336 (S.B. 1112), Sec. 1, eff. September 1, 2005.

Sec. 394.213. DUTIES OF PROPER MANAGEMENT. A provider has a duty to a consumer who receives debt management services from the

provider to ensure that client money held by the provider is managed properly at all times.

Added by Acts 2005, 79th Leg., Ch. 336 (S.B. 1112), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 368 (S.B. 141), Sec. 10, eff. September 1, 2011.

Sec. 394.214. ADDITIONAL ENFORCEMENT POWERS. (a) The finance commission may adopt rules to carry out this subchapter.

(b) The commissioner may:

(1) investigate the activities of a person subject to this subchapter to determine compliance with this subchapter, including examination of the books, accounts, and records of a provider; and

(2) require or permit a person to file a statement under oath and otherwise subject to the penalties of perjury, as to all the facts and circumstances of the matter to be investigated.

(c) Failure to comply with an investigation under Subsection (b) is grounds for issuance of a cease and desist order.

(d) The commissioner may receive and act on complaints, take action to obtain voluntary compliance with this subchapter, and refer cases to the attorney general for prosecution.

(e) The commissioner may enforce this subchapter and rules adopted under this subchapter by:

(1) ordering the violator to cease and desist from the violation and any similar violations;

(2) ordering the violator to take affirmative action to correct the violation, including the restitution of money or property to a person aggrieved by the violation;

(3) imposing an administrative penalty not to exceed $1,000 for each violation as provided by Subchapter F, Chapter 14; or

(4) rejecting an initial application, refusing to renew a registration, or revoking or suspending a registration as provided by Section 394.204.

(f) In determining the amount of an administrative penalty to be imposed under this section, the commissioner shall consider the seriousness of the violation, the good faith of the violator, the violator's history of previous violations, the deleterious effect of

the violation on the public, the assets of the violator, and any other factors the commissioner considers relevant.

(g) The commissioner, on relation of the attorney general at the request of the commissioner, may bring an action in district court to enjoin a person from engaging in an act or continuing a course of action that violates this chapter. The court may order a preliminary or final injunction.

Added by Acts 2005, 79th Leg., Ch. 336 (S.B. 1112), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 91, eff. September 1, 2019.

Sec. 394.215. PRIVATE REMEDIES. (a) An agreement for debt management services between a consumer and a person that is not registered under this subchapter is void.

(b) A consumer is entitled to recover all fees paid by the consumer under a void agreement, costs, and reasonable attorney's fees.

(c) In addition to any other remedies provided by this subchapter, a consumer who is aggrieved by a violation of this subchapter, a rule adopted by the finance commission under this subchapter, or by any unfair, unconscionable, or deceptive act or practice may recover:

(1) actual damages;

(2) punitive damages for acts or practices under a void agreement; and

(3) the costs of the action, including reasonable attorney's fees based on the amount of time involved.

(d) An aggrieved consumer may sue for injunctive and other appropriate equitable relief to stop a person from violating this subchapter.

(e) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer nor must the consumer exhaust any administrative remedies provided under this subchapter or any other applicable law.

Added by Acts 2005, 79th Leg., Ch. 336 (S.B. 1112), Sec. 1, eff. September 1, 2005.

CHAPTER 395. COMMUNITY REINVESTMENT WORK GROUP

SUBCHAPTER A. COMPOSITION AND OPERATION

Sec. 395.001. COMPOSITION. The community reinvestment work group is composed of:

(1) a representative of the comptroller's office, appointed by the comptroller;

(2) a representative of the Texas Department of Housing and Community Affairs, appointed by the executive director of that department;

(3) a representative of the Texas Department of Economic Development, appointed by the executive director of that department;

(4) a representative of the Texas Department of Banking, appointed by the banking commissioner of Texas; and

(5) a representative of the Texas Department of Insurance, appointed by the commissioner of insurance.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.28(a), eff. Sept. 1, 1999.

Sec. 395.002. OFFICERS. The representative of the comptroller's office serves as presiding officer of the work group. The members of the work group may elect other necessary officers.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.28(a), eff. Sept. 1, 1999.

Sec. 395.003. MEETINGS. The work group shall meet quarterly and may meet more often at the call of the presiding officer.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.28(a), eff. Sept. 1, 1999.

Sec. 395.004. TERM OF OFFICE; REMOVAL. A member of the work group serves a two-year term and may be removed for any reason by the appointing authority.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.28(a), eff. Sept. 1, 1999.

Sec. 395.005. EXPENSES; COMPENSATION. The appointing authority is responsible for the expenses of a member's service on the work group. A member of the work group receives no additional compensation for serving on the work group.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.28(a), eff. Sept. 1, 1999.

SUBCHAPTER B. DUTIES

Sec. 395.101. GENERAL DUTIES. The work group shall work in conjunction with the banking community in this state to:

(1) develop statewide community reinvestment strategies using existing investment pools and other investment vehicles to leverage private capital from banks, insurance companies, and other entities for community development in the state;

(2) consult and coordinate with representatives from appropriate federal regulatory agencies, including the Office of the Comptroller of the Currency, the Federal Reserve Board of Governors, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision; and

(3) monitor and evaluate the strategies developed under this section.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.28(a), eff. Sept. 1, 1999.

Sec. 395.102. DEVELOPING STRATEGIES. In developing the strategies required by Section 395.101, the work group shall:

(1) explore innovative qualified investment strategies;

(2) ensure to the extent possible that the strategies encourage financial institutions in this state to lend money to low-income and moderate-income families and individuals in the state;

(3) coordinate its efforts to attract private capital through investments that meet the requirements of the Community Reinvestment Act of 1977 (12 U.S.C. Section 2901 et seq.); and

(4) ensure to the extent possible that the strategies augment existing Community Reinvestment Act of 1977 programs in the state, including the operation of local community development corporations.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.28(a), eff. Sept. 1, 1999.

CHAPTER 396. PRIVATE CHILD SUPPORT ENFORCEMENT AGENCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 396.001. DEFINITIONS. In this chapter:

(1) "Child support enforcement" means an action, conduct, or practice in enforcing, or in soliciting for enforcement, a child support obligation, including the collection of an amount owed under a child support obligation.

(2) "Child support obligation" means an obligation for the payment of financial support for a child under an order or writ issued by a court or other tribunal.

(3) "Department" means the Texas Department of Banking.

(4) "Foreign agency" means a private child support enforcement agency that engages in business in this state solely by use of telephone, mail, the Internet, facsimile transmission, or any other means of interstate communication.

(5) "Obligee" means the person identified in an order for child support issued by a court or other tribunal as the payee to whom an obligor's amounts of ordered child support are due.

(6) "Obligor" means the person identified in an order for child support issued by a court or other tribunal as the individual required to make payment under the terms of a support order for a child.

(7) "Private child support enforcement agency" means an individual or nongovernmental entity who engages in the enforcement of child support ordered by a court or other tribunal for a fee or other consideration. The term includes a foreign agency. The term does not include:

(A) an attorney enforcing a child support obligation on behalf of, and in the name of, a client unless the attorney has an employee who is not an attorney and who on behalf of the attorney:

(i) regularly solicits for child support

enforcement; or

(ii) regularly contacts child support obligees or obligors for the purpose of child support enforcement;

(B) a state agency designated to serve as the state's Title IV-D agency in accordance with Part D, Title IV, Social Security Act (42 U.S.C. Section 651 et seq.), as amended; or

(C) a contractor awarded a contract to engage in child support enforcement on behalf of a governmental agency, including a contractor awarded a contract by a political subdivision of this or another state that is authorized by law to enforce a child support obligation.

(8) Repealed by Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 47(3), eff. September 1, 2019.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 32, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 47(3), eff. September 1, 2019.

SUBCHAPTER E. REQUIRED BUSINESS PRACTICES

Sec. 396.202. RECORDS. (a) A private child support enforcement agency shall maintain records of all child support collections made on behalf of, and disbursed to, a client who is an obligee, including:

(1) the name of any obligor who made child support payments collected by the agency;

(2) the amount of support collected by the agency for each client, including:

(A) the date on which the amount was collected; and

(B) the date on which each amount due the client by the obligor was paid to the client;

(3) a copy of the order establishing the child support obligation under which a collection was made by the agency; and

(4) any other pertinent information relating to the child support obligation, including any case, cause, or docket number of the court having jurisdiction over the matter.

(b) The records required under this section must be updated at

least monthly and must be maintained by the private child support enforcement agency for a period of four years from the date of the last support payment collected by the agency on behalf of an obligee.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 33, eff. September 1, 2019.

Sec. 396.203. CONTRACT FOR SERVICES. (a) A private child support enforcement agency shall execute a written contract for the enforcement of child support for each client of the agency that is residing in this state.

(b) The contract required under this section must:

(1) be in writing, dated, and signed by both parties to the contract; and

(2) specify its terms in clear language.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 34, eff. September 1, 2019.

SUBCHAPTER F. PROHIBITED PRACTICES

Sec. 396.251. THREATS OR COERCION. (a) In enforcing a child support obligation, a private child support enforcement agency may not use threats, coercion, or attempts to coerce that employ any of the following practices:

(1) using or threatening to use violence or other criminal means to cause harm to an obligor or property of the obligor;

(2) accusing falsely or threatening to accuse falsely an obligor of a violation of state or federal child support laws;

(3) taking or threatening to take an enforcement action against an obligor that is not authorized by law; or

(4) intentionally representing to a person that the agency is a governmental agency authorized to enforce a child support obligation.

(b) Subsection (a) does not prevent a private child support enforcement agency from:

(1) informing an obligor that the obligor may be subject to penalties prescribed by law for failure to pay a child support obligation; or

(2) taking, or threatening to take, an action authorized by law for the enforcement of a child support obligation by the agency.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 35, eff. September 1, 2019.

Sec. 396.252. FRAUDULENT, DECEPTIVE, OR MISLEADING REPRESENTATIONS. In enforcing a child support obligation, a private child support enforcement agency or employee of the agency may not:

(1) identify the agency by any name other than one by which the agency is authorized to do business under the laws of this state;

(2) falsely represent the nature of the child support enforcement activities in which the agency is authorized by law to engage; or

(3) falsely represent that an oral or written communication is the communication of an attorney.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 36, eff. September 1, 2019.

SUBCHAPTER H. CIVIL REMEDIES

Sec. 396.351. CIVIL ACTION. (a) In addition to any other remedy provided by this chapter, a person may bring an action for:

(1) injunctive relief to enjoin or restrain a violation of this chapter; and

(2) actual damages incurred as a result of a violation of this chapter.

(b) A person who prevails in an action brought under this section is entitled to recover court costs and reasonable attorney's fees.

(c) On a finding by a court that an action under this section was brought in bad faith or for purposes of harassment, the court

shall award the defendant attorney's fees reasonably related to the work performed and costs.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

Sec. 396.352. SERVICE OF PROCESS OUTSIDE STATE. (a) A private child support enforcement agency that is located in another state or that engages in the business of child support enforcement in this state in violation of this chapter is considered to have submitted to the jurisdiction of the courts of this state with respect to an action brought under this chapter.

(b) A foreign agency engaging in business in this state in violation of this chapter is considered to have appointed the department as the agency's agent for service of process in any action, suit, or proceeding arising from a violation of this chapter.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 37, eff. September 1, 2019.

Sec. 396.353. REMEDIES UNDER OTHER LAW. (a) A violation of this chapter is a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code, and is actionable under that subchapter.

(b) This chapter does not affect or alter a remedy at law or in equity otherwise available to an obligor, obligee, governmental entity, or other legal entity.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

CHAPTER 397. DEBT CANCELLATION AGREEMENTS FOR CERTAIN VEHICLE LEASES

Sec. 397.001. DEFINITIONS. In this chapter:

(1) "Covered vehicle" includes a self-propelled or towed vehicle designed for personal use, including an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, snowmobile, camper, boat, personal watercraft, and personal watercraft trailer.

(2) "Debt cancellation agreement" means a lease term or a

contractual arrangement modifying a lease term under which a lessor or holder agrees to cancel all or part of an obligation of the lessee to pay the lessor or holder on the occurrence of the total loss or theft of the covered vehicle that is the subject of the lease but does not include an offer to pay a specified amount on the total loss or theft of the covered vehicle.

(3) "Holder" means a person who is:

(A) a lessor; or

(B) the assignee or transferee of a lease.

(4) "Lease" means a lease for a covered vehicle.

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 7, eff. September 1, 2017.

Sec. 397.002. APPLICABILITY. This chapter does not apply to a lease that is a retail installment transaction under Section 345.068 or 348.002.

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 7, eff. September 1, 2017.

Sec. 397.003. RELATIONSHIP TO INSURANCE. A debt cancellation agreement to which this chapter applies is not insurance.

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 7, eff. September 1, 2017.

Sec. 397.004. LIMITATION ON CERTAIN DEBT CANCELLATION AGREEMENTS. (a) This chapter applies only to a debt cancellation agreement, including a gap waiver agreement or other similarly named agreement, that includes insurance coverage as part of the lessee's responsibility to the holder.

(b) The amount charged for a debt cancellation agreement made in connection with a lease may not exceed five percent of the adjusted capitalized cost financed pursuant to the lease.

(c) The debt cancellation agreement becomes a part of or a separate addendum to the lease and remains a term of the lease on the assignment, sale, or transfer by the holder.

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 7, eff. September 1, 2017.

Sec. 397.005. DEBT CANCELLATION AGREEMENTS EXCLUSION LANGUAGE. (a) In addition to the provisions required by Section 397.006, a debt cancellation agreement must fully disclose all provisions permitting the exclusion of loss or damage including, if applicable:

(1) an act occurring after the original maturity date or date of the holder's acceleration of the lease;

(2) any dishonest, fraudulent, illegal, or intentional act of any authorized driver that directly results in the total loss of the covered vehicle;

(3) any act of gross negligence by an authorized driver that directly results in the total loss of the covered vehicle;

(4) conversion, embezzlement, or concealment by any person in lawful possession of the covered vehicle;

(5) lawful confiscation by an authorized public official;

(6) the operation, use, or maintenance of the covered vehicle in any race or speed contest;

(7) war, whether or not declared, invasion, insurrection, rebellion, revolution, or an act of terrorism;

(8) normal wear and tear, freezing, or mechanical or electrical breakdown or failure;

(9) use of the covered vehicle for primarily commercial purposes;

(10) damage that occurs after the covered vehicle has been repossessed;

(11) damage to the covered vehicle before the purchase of the debt cancellation agreement;

(12) unpaid insurance premiums and salvage, towing, and storage charges relating to the covered vehicle;

(13) damage related to any personal property attached to or within the covered vehicle;

(14) damages associated with falsification of documents by any person not associated with the lessor or other person canceling the lessee's obligation;

(15) any unpaid debt resulting from exclusions in the lessee's primary physical damage coverage not included in the debt cancellation agreement;

(16) abandonment of the covered vehicle by the lessee only if the lessee voluntarily discards, leaves behind, or otherwise relinquishes possession of the covered vehicle to the extent that the relinquishment shows intent to forsake and desert the covered vehicle so that the covered vehicle may be appropriated by any other person;

(17) any amounts deducted from the primary insurance carrier's settlement due to prior damages; and

(18) any loss occurring outside the United States or outside the United States and Canada.

(b) An exclusion of loss or damage not listed in Subsection (a) may be included in a debt cancellation agreement only if the exclusion is disclosed in plain, easy to read language.

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 7, eff. September 1, 2017.

Sec. 397.006. REQUIRED DEBT CANCELLATION AGREEMENT LANGUAGE. A debt cancellation agreement must state:

(1) the contact information of the lessor, the holder, and any administrator of the agreement;

(2) the name and address of the lessee;

(3) the cost and term of the debt cancellation agreement;

(4) the procedure the lessee must follow to obtain benefits under the terms of the debt cancellation agreement, including a telephone number and address where the lessee may provide notice under the debt cancellation agreement;

(5) the period during which the lessee is required to notify the lessor, the holder, or any administrator of the agreement of any potential loss under the debt cancellation agreement for total loss or theft of the covered vehicle;

(6) that in order to make a claim, the lessee must provide or complete some or all of the following documents and provide those documents to the lessor, the holder, or any administrator of the agreement:

(A) a debt cancellation request form;

(B) proof of loss and settlement payment from the lessee's primary comprehensive, collision, or uninsured or underinsured motorist policy or other parties' liability insurance policy for the settlement of the insured total loss of the covered

vehicle;

(C) verification of the lessee's primary insurance deductible;

(D) a copy of any police report filed in connection with the total loss or theft of the covered vehicle; and

(E) a copy of the damage estimate;

(7) that documentation not described by Subdivision (6) or required by the lessor, the holder, or any administrator of the agreement is not required to substantiate the loss or determine the amount of debt to be canceled;

(8) that notwithstanding the collection of the documents under Subdivision (6), on reasonable advance notice the lessor, the holder, or any administrator of the agreement may inspect the lessee's covered vehicle;

(9) that the lessor or holder will cancel all or part of the lessee's obligation as provided in the debt cancellation agreement on the occurrence of total loss or theft of the covered vehicle;

(10) the method to be used to calculate refunds;

(11) the method for calculating the amount to be canceled under the debt cancellation agreement on the occurrence of total loss or theft of a covered vehicle;

(12) that purchase of a debt cancellation agreement is not required for the lessee to obtain a lease and will not be a factor in the lease approval process;

(13) that in order to cancel the debt cancellation agreement and receive a refund, the lessee must provide a written request to cancel to the lessor, the holder, or any administrator of the agreement;

(14) that if total loss or theft of the covered vehicle has not occurred, the lessee has 30 days from the date of the lease or the issuance of the debt cancellation agreement, whichever is later, or a longer period as provided under the debt cancellation agreement, to cancel the debt cancellation agreement and receive a full refund; and

(15) that the lessor will cancel certain amounts under the debt cancellation agreement for total loss or theft of a covered vehicle, in the following or substantially similar language: "YOU WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS LEASE IN THE CASE OF A TOTAL LOSS OR THEFT OF THE COVERED VEHICLE AS STATED IN THE DEBT

CANCELLATION AGREEMENT."

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 7, eff. September 1, 2017.

Sec. 397.007. ADDITIONAL REQUIREMENTS FOR DEBT CANCELLATION AGREEMENTS. (a) If a lessee purchases a debt cancellation agreement, the lessor must provide to the lessee a true and correct copy of the agreement not later than the 10th day after the date of the lease.

(b) A holder must comply with the terms of a debt cancellation agreement not later than the 60th day after the date of receipt of all necessary information required by the holder or administrator of the agreement to process the request.

(c) A debt cancellation agreement may not knowingly be offered by a lessor if:

(1) the lease is already protected by gap insurance; or

(2) the purchase of the debt cancellation agreement is required for the lessee to obtain the lease.

(d) This section does not apply to a debt cancellation agreement offered in connection with the lease of a commercial vehicle.

(e) The sale of a debt cancellation agreement must be for a single payment.

(f) A holder that offers a debt cancellation agreement must report the sale of and forward money received on all such agreements to any designated party as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.

(g) Money received or held by a holder or any administrator of a debt cancellation agreement and belonging to an insurance company, holder, or administrator under the terms of a written agreement must be held by the holder or administrator in a fiduciary capacity.

(h) A lessor that negotiates a debt cancellation agreement and subsequently assigns the lease shall maintain documents relating to the agreement that come into the lessor's possession.

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 7, eff. September 1, 2017.

Sec. 397.008. REFUND FOR DEBT CANCELLATION AGREEMENTS. (a) A refund or credit of the debt cancellation agreement fee must be based on the earliest date of:

(1) the prepayment of the lease in full before the original maturity date;

(2) a demand by the holder for payment in full of the unpaid balance or acceleration;

(3) a request by the lessee for cancellation of the debt cancellation agreement; or

(4) the total denial of a debt cancellation request based on one of the exclusions listed in Section 397.005, except in the case of a partial loss of the covered vehicle.

(b) The refund or credit for the debt cancellation agreement can be rounded to the nearest whole dollar. A refund or credit is not required if the amount of the refund or credit calculated is less than $5.

(c) If total loss or theft has not occurred, the lessee may cancel the debt cancellation agreement not later than the 30th day after the date of the lease or the issuance of the debt cancellation agreement, whichever is later, or a later date as provided under the debt cancellation agreement. On cancellation, the holder or any administrator of the agreement shall refund or credit the entire debt cancellation agreement fee. A lessee may not cancel the debt cancellation agreement and subsequently receive any benefits under the agreement.

(d) A holder may in good faith rely on a computation by any administrator of the agreement of the balance waived, unless the holder has knowledge that the computation is not correct. If a computation by the administrator of the balance waived is not correct, the holder must within a reasonable time of learning that the computation is incorrect make the necessary corrections or cause the corrections to be made to the lessee's account. This subsection does not prevent the holder from obtaining reimbursement from the administrator or another responsible for the debt cancellation agreement or computation.

(e) If the debt cancellation agreement terminates due to the early termination of the lease, the holder shall, not later than the 60th day after the date the debt cancellation agreement terminates:

(1) refund or credit an appropriate amount of the debt cancellation agreement fee; or

(2) cause to be refunded or credited an appropriate amount of the debt cancellation agreement fee by providing written instruction to the appropriate person.

(f) The holder shall ensure that a refund or credit of an amount of a debt cancellation agreement fee made by another person under Subsection (e)(2) is made not later than the 60th day after the date the debt cancellation agreement terminates.

(g) The holder shall maintain records of any refund or credit of an amount of a debt cancellation agreement fee made under Subsection (e) and provide electronic access to those records until the later of the fourth anniversary of the date of the lease or the second anniversary of the date of the refund or credit.

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 7, eff. September 1, 2017.

Sec. 397.009. ENFORCEMENT. (a) If the attorney general has reason to believe that a person is engaging in, has engaged in, or is about to engage in any method, act, or practice that is a violation of this chapter, the attorney general may bring an action in the name of the state against the person to restrain the person by temporary restraining order, temporary injunction, or permanent injunction from engaging in the method, act, or practice.

(b) An action brought under Subsection (a) may be commenced in the district court of the county in which the person against whom the action is brought resides, has the person's principal place of business, or has done business, in the district court of the county in which any or all parts of the method, act, or practice giving rise to the action occurred, or, on the consent of the parties, in a district court of Travis County. The court may issue a temporary restraining order, temporary injunction, or permanent injunction to restrain or prevent a violation of this chapter and injunctive relief must be issued without bond.

(c) In addition to the request for a temporary restraining order, temporary injunction, or permanent injunction, the attorney general may request, and the trier of fact may award, a civil penalty to be paid to the state in an amount of not more than $20,000 per violation.

(d) The attorney general may recover reasonable expenses

incurred in obtaining injunctive relief or a civil penalty under this section, including reasonable investigative costs, court costs, and attorney's fees.

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 7, eff. September 1, 2017.