

By: Solomons

H.B. No. 955

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of financial businesses and practices;  
providing civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. CONSUMER PROTECTION

SECTION 1.01. Subtitle A, Title 4, Finance Code, is amended  
by adding Chapter 308 to read as follows:

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.

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           (1) Part C of 15 U.S.C. Chapter 41 Subchapter I (15  
2 U.S.C. Section 1601 et seq.);

3           (2) 12 C.F.R. Part 226.1 et seq. adopted by the Board  
4 of Governors of the Federal Reserve System; and

5           (3) the Official Staff Commentary and other  
6 interpretations of that statute and regulation by the Board of  
7 Governors of the Federal Reserve System and its staff.

8           (d) If a requirement of this section and a requirement of a  
9 federal law, including a regulation or an interpretation of federal  
10 law, are inconsistent or in conflict, federal law controls and the  
11 inconsistent or conflicting requirements of this chapter do not  
12 apply.

13           (e) A creditor who complies with the Truth in Lending Act  
14 (15 U.S.C. Section 1601 et seq.) and Federal Reserve Regulation Z  
15 (12 C.F.R. Part 226) in advertising a credit transaction is  
16 considered to have fully complied with this section.

17           Sec. 308.003. NO DOUBLE LIABILITY OR ENFORCEMENT FOR SAME  
18 ACT OR PRACTICE. A judgment, consent decree, assurance of  
19 compliance, or other resolution of a claimed violation asserted by  
20 a federal agency under the Consumer Credit Protection Act (15  
21 U.S.C. Section 1601 et seq.) bars a subsequent action or other  
22 enforcement under this chapter with respect to the same act or  
23 practice.

24           SECTION 1.02. Section 341.402(c), Finance Code, is amended  
25 to read as follows:

26           (c) In addition to the other liabilities prescribed by this  
27 section, a person holding a license issued under this subtitle

1 ~~[that is held by a person]~~ who violates Section 341.401 is subject  
2 to revocation or suspension of the license or the assessment of  
3 civil penalties by the commissioner.

4 SECTION 1.03. Section 341.403(a), Finance Code, is amended  
5 to read as follows:

6 (a) A person may not, in any manner, advertise or cause to be  
7 advertised a false, misleading, or deceptive statement or  
8 representation relating to a rate, term, or condition of a credit  
9 transaction, including a loan, regulated under this subtitle,  
10 Subtitle C, or Chapter 394, or advertise credit terms that the  
11 person does not intend to offer to consumers who qualify for those  
12 terms.

13 SECTION 1.04. Subtitle B, Title 4, Finance Code, is amended  
14 by adding Chapter 350 to read as follows:

15 CHAPTER 350. REQUIREMENTS AND LIMITATIONS APPLICABLE TO CONSUMER  
16 CREDITORS NOT LICENSED OR REGISTERED UNDER THIS TITLE

17 Sec. 350.001. APPLICABILITY. (a) This chapter applies to a  
18 person who extends credit primarily for personal, family, or  
19 household use and not for a business, commercial, investment, or  
20 agricultural purpose. For the purposes of this chapter, credit  
21 means the right granted to a debtor to defer payment of debt or to  
22 incur debt and defer its payment. A creditor is subject to this  
23 chapter if the creditor charges a finance charge or extends credit  
24 payable in one or more installments.

25 (b) This chapter does not apply to a person who is:

26 (1) licensed or registered under Title 3 or 4; or

27 (2) exempt from licensing or registration under this

1 title.

2 Sec. 350.002. PREVENTION OF EVASION. A person may not use  
3 any device, subterfuge, or pretense to evade the application of  
4 this section.

5 Sec. 350.003. COMPLIANCE WITH FAIR TRADE PRACTICES ACT. A  
6 creditor who is not licensed, registered, or otherwise exempt under  
7 this title must comply with the requirements of 15 U.S.C. Section  
8 45. An enforcement action to compel compliance under this section  
9 may include an action to enjoin illegal activities or order  
10 restitution.

11 Sec. 350.004. PENALTIES. Chapter 349 applies to violations  
12 of this chapter and the rules adopted under this chapter.

13 ARTICLE 2. USURY REFORM

14 SECTION 2.01. Section 301.002(4), Finance Code, is amended  
15 to read as follows:

16 (4) "Interest" means compensation for the use,  
17 forbearance, or detention of money. The term does not include time  
18 price differential, regardless of how it is denominated. The term  
19 does not include compensation or other amounts that are determined  
20 or stated by this code or other applicable law not to constitute  
21 interest or that are permitted to be contracted for, charged, or  
22 received in addition to interest in connection with an extension of  
23 credit.

24 SECTION 2.02. Sections 303.009(a)-(d), Finance Code, are  
25 amended to read as follows:

26 (a) If [~~Except as provided by Subsection (c), if~~] the rate  
27 computed for the weekly, monthly, quarterly, or annualized ceiling

1 is less than 18 percent a year, the ceiling is 18 percent a year.

2 (b) Except as provided by Subsection (c), [~~(d), or (e),~~] if  
3 the rate computed for the weekly, monthly, quarterly, or annualized  
4 ceiling is more than 24 percent a year, the ceiling is 24 percent a  
5 year.

6 (c) For a contract made, extended, or renewed under which  
7 credit is extended for a business, commercial, investment, or  
8 similar purpose, [~~and the amount of the credit extension is~~  
9 ~~\$250,000 or more, the 24-percent limitation on the ceilings in~~  
10 ~~Subsection (b) does not apply, and~~] the limitation on the ceilings  
11 determined by those computations is 28 percent a year.

12 (d) For an open-end account credit agreement that provides  
13 for credit card transactions on which a merchant discount is not  
14 imposed or received by the creditor, [~~if the rate computed for the~~  
15 ~~weekly ceiling, monthly ceiling, quarterly ceiling, or annualized~~  
16 ~~ceiling is more than 21 percent a year,~~] the ceiling is 21 percent a  
17 year.

18 SECTION 2.03. Subchapter A, Chapter 303, Finance Code, is  
19 amended by adding Section 303.017 to read as follows:

20 Sec. 303.017. VARIOUS CHARGES ON CONSUMER LOANS MADE BY  
21 PARTICULAR LENDERS. Notwithstanding Section 342.005, a bank,  
22 savings association, savings bank, or credit union making a loan  
23 primarily for personal, family, or household use under authority of  
24 this chapter may charge all reasonable expenses and fees incurred  
25 in connection with making, closing, disbursing, extending,  
26 readjusting, or renewing a loan not secured by real property,  
27 whether or not those expenses or fees are paid to third parties.

1 Those reasonable expenses and fees paid to third parties are not  
2 interest.

3 SECTION 2.04. Section 303.201, Finance Code, is amended to  
4 read as follows:

5 Sec. 303.201. LICENSE REQUIRED. A person engaged in the  
6 business of making loans for personal, family, or household use for  
7 which the rate is authorized under this chapter must obtain a  
8 license under Chapter 342 unless the person is not required to  
9 obtain a license under Section 342.051.

10 SECTION 2.05. Section 305.001, Finance Code, is amended by  
11 amending Subsection (a) and adding Subsection (a-1) to read as  
12 follows:

13 (a) A creditor who contracts for, charges, or receives  
14 interest that is greater than the amount authorized by this  
15 subtitle in connection with a transaction for personal, family, or  
16 household use is liable to the obligor for an amount that is equal  
17 to the greater of:

18 (1) three times the amount computed by subtracting the  
19 amount of interest allowed by law from the total amount of interest  
20 contracted for, charged, or received; or

21 (2) \$2,000 or 20 percent of the amount of the  
22 principal, whichever is less.

23 (a-1) A creditor who contracts for or receives interest that  
24 is greater than the amount authorized by this subtitle in  
25 connection with a commercial transaction is liable to the obligor  
26 for an amount that is equal to three times the amount computed by  
27 subtracting the amount of interest allowed by law from the total

1 amount of interest contracted for or received.

2 SECTION 2.06. Section 305.002(b), Finance Code, is amended  
3 to read as follows:

4 (b) This section applies only to a contract or transaction  
5 for personal, family, or household use subject to this subtitle.

6 SECTION 2.07. Sections 305.006(b) and (d), Finance Code,  
7 are amended to read as follows:

8 (b) Not later than the 61st day before the date an obligor  
9 files a suit seeking penalties for a transaction in which a creditor  
10 has contracted for, ~~or~~ charged, or received usurious interest,  
11 the obligor shall give the creditor written notice stating in  
12 reasonable detail the nature and amount of the violation.

13 (d) With respect to ~~[The notice requirement of Subsection~~  
14 ~~(b) does not apply to]~~ a defendant filing a counterclaim action  
15 alleging usurious interest in an original action by the creditor,  
16 the defendant shall provide notice complying with Subsection (b) at  
17 the time of filing the counterclaim and, on application of the  
18 creditor to the court, the action is subject to abatement for a  
19 period of 60 days from the date of the court order. During the  
20 abatement period the creditor may correct a violation. As part of  
21 the correction of the violation, the creditor shall offer to pay the  
22 obligor's reasonable attorney's fees as determined by the court  
23 based on the hours reasonably expended by the obligor's counsel  
24 with regard to the alleged violation before the abatement. A  
25 creditor who corrects a violation as provided by this subsection is  
26 not liable to an obligor for the violation.

27 SECTION 2.08. Sections 306.001(2) and (8), Finance Code,

1 are amended to read as follows:

2 (2) "Affiliate of an obligor" means a person who  
3 directly or indirectly, or through one or more intermediaries or  
4 other entities, owns an interest in, controls, is controlled by, or  
5 is under common control with the obligor, or a person in which the  
6 obligor directly or indirectly, or through one or more  
7 intermediaries or other entities, owns an interest. In this  
8 subdivision "control" means the possession, directly or  
9 indirectly, or with one or more other persons, of the power to  
10 direct or cause the direction of the management and policies of a  
11 person, whether through the ownership of voting securities, by  
12 contract, or otherwise.

13 (8) "Prepayment premium [~~penalty~~]" means compensation  
14 paid by or that is or will become due from an obligor to a creditor  
15 solely as a result or condition of the payment or maturity of all or  
16 a portion of the principal amount of a loan before its stated  
17 maturity or a regularly scheduled date of payment, as a result of  
18 the obligor's election to pay all or a portion of the principal  
19 amount before its stated maturity or a regularly scheduled date of  
20 payment.

21 SECTION 2.09. Section 306.001, Finance Code, is amended by  
22 adding Subdivision (5-a) and amending Subdivision (9) to read as  
23 follows:

24 (5-a) "Exempt commercial loan" means a commercial loan  
25 in which one or more persons as part of the same transaction lends,  
26 advances, borrows, or receives, or is obligated to lend or advance  
27 or entitled to borrow or receive, money or credit with an aggregate



1 value of:

2 (A) \$7 million or more if the commercial loan is  
3 primarily secured by real property; or

4 (B) \$500,000 or more if the commercial loan is  
5 not primarily secured by real property.

6 (9) "Qualified commercial loan":

7 (A) means:

8 (i) a commercial loan in which one or more  
9 persons as part of the same transaction lends, advances, borrows,  
10 or receives, or is obligated to lend or advance or entitled to  
11 borrow or receive, money or credit with an aggregate value of:

12 (a) \$1 [~~\$3~~] million or more but less  
13 than \$7 million if the commercial loan is primarily secured by real  
14 property; or

15 (b) \$100,000 [~~\$250,000~~] or more but  
16 less than \$500,000 if the commercial loan is not primarily secured  
17 by real property and [~~if the aggregate value of the commercial loan~~  
18 ~~is less than \$500,000,~~] the loan documents contain a written  
19 certification from the borrower that:

20 (1) the borrower has been  
21 advised by the lender to seek the advice of an attorney and an  
22 accountant in connection with the commercial loan; and

23 (2) the borrower has had the  
24 opportunity to seek the advice of an attorney and accountant of the  
25 borrower's choice in connection with the commercial loan; and

26 (ii) a renewal or extension of a commercial  
27 loan described by this paragraph [~~Paragraph (A)~~], regardless of the

1 principal amount of the loan at the time of the renewal or  
2 extension; and

3 (B) does not include a commercial loan made for  
4 the purpose of financing a business licensed by the Motor Vehicle  
5 Board of the Texas Department of Transportation under Section  
6 2301.251(a), Occupations Code.

7 SECTION 2.10. Section 306.002, Finance Code, is amended by  
8 amending Subsection (a) and adding Subsection (c) to read as  
9 follows:

10 (a) Except as provided by Section 306.1015, a [A] creditor  
11 may contract for, charge, and receive from an obligor on a  
12 commercial loan a rate or amount of interest that does not exceed  
13 the applicable ceilings computed in accordance with Chapter 303.

14 (c) The provisions of this chapter do not affect  
15 transactions that are not subject to this chapter nor affect or  
16 negatively impact any rule of law applicable to transactions not  
17 subject to this chapter.

18 SECTION 2.11. Subchapter B, Chapter 306, Finance Code, is  
19 amended by adding Section 306.1015 to read as follows:

20 Sec. 306.1015. EXEMPT COMMERCIAL LOAN--RATE CEILINGS  
21 INAPPLICABLE. (a) The parties to an exempt commercial loan  
22 agreement may contract for, charge, and receive any rate or amount  
23 of interest to which the parties agree, however computed.

24 (b) A rate ceiling provided by this title or another law of  
25 this state does not apply to an exempt commercial loan.

26 SECTION 2.12. Section 306.005, Finance Code, is amended to  
27 read as follows:

1           Sec. 306.005. PREPAYMENT PREMIUMS AND SIMILAR AMOUNTS  
2 ~~[PENALTY]~~. With respect to a loan subject to this chapter, a [A]  
3 creditor and an obligor may agree to a prepayment premium,  
4 make-whole premium, or similar fee or charge, whether payable in  
5 the event of voluntary prepayment, involuntary prepayment,  
6 acceleration of maturity, or other cause that involves premature  
7 termination of the loan, and those amounts do not constitute  
8 interest ~~[penalty in a loan subject to this chapter. A prepayment~~  
9 ~~penalty is not interest]~~.

10           SECTION 2.13. Section 306.006, Finance Code, is amended to  
11 read as follows:

12           Sec. 306.006. CERTAIN AUTHORIZED CHARGES ON COMMERCIAL  
13 LOANS. In addition to the interest authorized by this chapter, the  
14 parties to a commercial loan may agree and stipulate for:

15           (1) a delinquency charge on the amount of any  
16 installment or other amount in default for a period of not less than  
17 10 days in an ~~[a reasonable]~~ amount not to exceed five percent of  
18 the total amount of the installment; and

19           (2) a returned check fee in an amount that does not  
20 ~~[to]~~ exceed the maximum fee authorized in Section 3.506, Business &  
21 Commerce Code, ~~[\$25]~~ on any check, draft, order, or other  
22 instrument or form of remittance that is returned unpaid or  
23 dishonored for any reason.

24           SECTION 2.14. Subchapter A, Chapter 306, Finance Code, is  
25 amended by adding Section 306.007 to read as follows:

26           Sec. 306.007. GUARANTY, ASSUMPTION, PAYMENT, OR OTHER  
27 AGREEMENT. With respect to a commercial loan, an obligor may be

1 required to assume, pay, or provide a guaranty of another person's  
2 existing or future obligation as a condition of the obligor's own  
3 use, forbearance, or detention of money. The amount of the other  
4 person's obligation required to be assumed, paid, or guaranteed  
5 does not constitute interest with respect to any obligation of the  
6 obligor.

7 SECTION 2.15. Section 345.104(a), Finance Code, is amended  
8 to read as follows:

9 (a) As an alternative to the maximum rate or amount  
10 authorized for a time price differential under Section 345.103, a  
11 retail charge agreement may provide for a rate or amount of time  
12 price differential that does not exceed[+]

13 [~~1~~] the rate or amount authorized by Chapter 303[+]  
14 ~~or~~

15 [~~2~~ the rate or amount of the applicable market  
16 competitive rate ceiling published under Subchapter D].

17 SECTION 2.16. Section 346.004, Finance Code, is amended to  
18 read as follows:

19 Sec. 346.004. APPLICATION OF CHAPTER TO REVOLVING CREDIT  
20 ACCOUNTS. (a) Unless the contract for the account provides  
21 otherwise, this chapter applies to a revolving credit account  
22 described by Section 346.003 if the loan or extension of credit is  
23 primarily for personal, family, or household use.

24 (b) Unless the contract for the account provides that this  
25 chapter applies [otherwise], this chapter does not apply [applies]  
26 to a revolving credit account described by Section 346.003 if  
27 [regardless of whether] the loan or extension of credit is for

1 ~~[consumer or]~~ business, commercial, investment, or similar  
2 purposes.

3 SECTION 2.17. Subchapter A, Chapter 347, Finance Code, is  
4 amended by adding Section 347.007 to read as follows:

5 Sec. 347.007. APPLICATION OF CHAPTER TO COMMERCIAL LOANS.  
6 This chapter does not apply to a credit transaction that is entered  
7 into primarily for commercial or business purposes.

8 SECTION 2.18. Section 348.001, Finance Code, is amended by  
9 amending Subdivision (4) and adding Subdivisions (3-a) and (10-a)  
10 to read as follows:

11 (3-a) "Motor home" means a motor vehicle that is  
12 designed to provide temporary living quarters and that:

13 (A) is built on a motor vehicle chassis as an  
14 integral part of or a permanent attachment to the chassis; and

15 (B) contains at least four of the following  
16 independent life support systems that are permanently installed and  
17 designed to be removed only for repair or replacement and that meet  
18 the standards of the American National Standards Institute,  
19 Standards for Recreational Vehicles:

20 (i) a cooking facility with an on-board  
21 fuel source;

22 (ii) a gas or electric refrigerator;

23 (iii) a toilet with exterior evacuation;

24 (iv) a heating or air-conditioning system  
25 with an on-board power or fuel source separate from the vehicle  
26 engine;

27 (v) a potable water supply system that

1 includes at least a sink, a faucet, and a water tank with an  
2 exterior service supply connection; or

3 (vi) a 110-125 volt electric power supply.

4 (4) "Motor vehicle" means an automobile, motor  
5 ~~[mobile]~~ home, truck, truck tractor, trailer, semitrailer, or bus  
6 designed and used primarily to transport persons or property on a  
7 highway. The term includes a commercial vehicle or heavy  
8 commercial vehicle. The term does not include:

9 (A) a boat trailer;

10 (B) a vehicle propelled or drawn exclusively by  
11 muscular power;

12 (C) a vehicle that is designed to run only on  
13 rails or tracks; or

14 (D) machinery that is not designed primarily for  
15 highway transportation but may incidentally transport persons or  
16 property on a public highway.

17 (10-a) "Towable recreation vehicle" means a  
18 nonmotorized vehicle that:

19 (A) was originally designed and manufactured  
20 primarily to provide temporary human habitation in conjunction with  
21 recreational, camping, or seasonal use;

22 (B) is titled and registered with the Texas  
23 Department of Transportation as a travel trailer through a county  
24 tax assessor-collector;

25 (C) is permanently built on a single chassis;

26 (D) contains at least one life support system;

27 and

1                   (E) is designed to be towable by a motor vehicle.

2           SECTION 2.19. Section 348.007, Finance Code, is amended by  
3 adding Subsection (a-1) to read as follows:

4           (a-1) A transaction in which a retail buyer purchases a  
5 towable recreation vehicle from a retail seller other than  
6 principally for the purpose of resale and agrees with the retail  
7 seller to pay part or all of the cash price in one or more deferred  
8 installments may be subject to this chapter instead of Chapter 345  
9 at the option of the seller.

10           SECTION 2.20. Section 342.308(a), Finance Code, is amended  
11 to read as follows:

12           (a) A lender or a person who is assigned a secondary  
13 mortgage loan may collect on or before the closing of the loan, or  
14 include in the principal of the loan:

15                   (1) reasonable fees for:

16                           (A) title examination and preparation of an  
17 abstract of title by:

18                                   (i) an attorney who is not an employee of  
19 the lender; or

20                                   (ii) a title company or property search  
21 company authorized to do business in this state; or

22                           (B) premiums or fees for title insurance or title  
23 search for the benefit of the mortgagee and, at the mortgagor's  
24 option, for title insurance or title search for the benefit of the  
25 mortgagor;

26                   (2) reasonable fees charged to the lender by an  
27 attorney who is not a salaried employee of the lender for

1 preparation of the loan documents in connection with the mortgage  
2 loan if the fees are evidenced by a statement for services rendered;

3 (3) charges prescribed by law that are paid to public  
4 officials for determining the existence of a security interest or  
5 for perfecting, releasing, or satisfying a security interest;

6 (4) reasonable fees for an appraisal of real property  
7 offered as security for the loan prepared by an [~~a licensed or~~  
8 ~~certified~~] appraiser who is not a salaried employee of the lender;

9 (5) the reasonable cost of a credit report;

10 (6) reasonable fees for a survey of real property  
11 offered as security for the loan prepared by a registered surveyor  
12 who is not a salaried employee of the lender;

13 (7) the premiums received in connection with the sale  
14 of credit life insurance, credit accident and health insurance, or  
15 other insurance that protects the mortgagee against default by the  
16 mortgagor, the benefits of which are applied in whole or in part to  
17 reduce or extinguish the loan balance; or

18 (8) reasonable fees relating to real property offered  
19 as security for the loan that are incurred to comply with a  
20 federally mandated program if the collection of the fees or the  
21 participation in the program is required by a federal agency; and

22 (9) an administrative fee, subject to Subsection (c),  
23 in an amount not to exceed \$25 for a loan of more than \$1,000 or \$20  
24 for a loan of \$1,000 or less.

25 ARTICLE 3. TEXAS SAVINGS AND MORTGAGE LENDING DEPARTMENT

26 SECTION 3.01. The legislature finds that:

27 (1) the Savings and Loan Department regulates



1 state-chartered savings and loan institutions, savings banks,  
2 licensed mortgage brokers, and loan officers and registers mortgage  
3 bankers;

4 (2) there is one state-chartered savings and loan  
5 institution that has not converted to a state-chartered savings  
6 bank or other form of institution; and

7 (3) the department's name no longer fits the  
8 activities and regulatory responsibilities of the department, and  
9 does not provide sufficient clarity of its functions to the public.

10 SECTION 3.02. Chapter 13, Finance Code, is amended by  
11 adding Section 13.0015 to read as follows:

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

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

18 (c) A reference in a statute or rule to the savings and loan  
19 commissioner means the savings and mortgage lending commissioner.

20 SECTION 3.03. Section 13.008(a), Finance Code, is amended  
21 to read as follows:

22 (a) The finance commission shall establish reasonable and  
23 necessary fees for the administration of Subtitles B and C, Title 3,  
24 and Chapters 156 and 157, and for the support of the finance  
25 commission as provided by Subchapter C, Chapter 11. In  
26 establishing the reasonable and necessary fees for the  
27 administration of Chapters 156 and 157, the commissioner and the

1 finance commission may not exceed the limit on the fees set forth in  
2 those chapters.

3 SECTION 3.04. Section 119.201(a), Finance Code, is amended  
4 to read as follows:

5 (a) The commissioner may require a savings bank that  
6 knowingly violates this subtitle or a rule adopted under this  
7 subtitle to pay to the department [~~Savings and Loan Department~~] an  
8 administrative penalty not to exceed \$10,000 [~~\$1,000~~] for each day  
9 that the violation occurs after notice of the violation is given by  
10 the commissioner.

11 SECTION 3.05. The savings and mortgage lending commissioner  
12 shall study the desirability and feasibility of developing  
13 alternative thrift charters, including special purpose charters,  
14 and shall issue a report, including findings and legislative  
15 recommendations, to the legislature not later than December 31,  
16 2006.

17 ARTICLE 4. CONSUMER CREDIT COMMISSIONER

18 SECTION 4.01. Section 14.208, Finance Code, is amended to  
19 read as follows:

20 Sec. 14.208. INJUNCTION; APPEAL. (a) If the commissioner  
21 has reasonable cause to believe that a person is violating a statute  
22 to which this chapter applies, the commissioner, in addition to any  
23 other authorized action, may issue an order [~~the person~~] to cease  
24 and desist [~~refrain~~] from the violation or an order to take  
25 affirmative action, or both, to enforce compliance. A person may  
26 appeal the order to the finance commission as provided by  
27 Subsection (d) or directly to district court in accordance with

1 Chapter 2001, Government Code.

2 (b) If a person against whom an order under this section is  
3 made requests a hearing not later than the 30th day after the date  
4 the order is served, the commissioner shall set and give notice of a  
5 hearing before a hearings officer. The hearing is governed by  
6 Chapter 2001, Government Code. Based on the findings of fact,  
7 conclusions of law, and recommendations of the hearings officer,  
8 the commissioner by order may find whether a violation has  
9 occurred.

10 (c) If a hearing is not timely requested under Subsection  
11 (b), the order is considered final and becomes enforceable. The  
12 commissioner, after giving notice, may impose against a person who  
13 violates a cease and desist order an administrative penalty in an  
14 amount not to exceed \$1,000 for each day of violation. In addition  
15 to any other remedy provided by law, the commissioner on relation of  
16 the attorney general may institute in district court a suit for  
17 injunctive relief and to collect an administrative penalty. A bond  
18 is not required of the commissioner with respect to injunctive  
19 relief granted under this section. [The commissioner, on relation  
20 of the attorney general at the request of the commissioner, may also  
21 bring an action in district court to enjoin the person from engaging  
22 in or continuing the violation or doing an act that furthers the  
23 violation.] In the action, the court may enter as proper an order  
24 awarding a preliminary or final injunction.

25 (d) If a party seeks review of the order by the finance  
26 commission, the party shall file a petition for review with the  
27 finance commission not later than the 30th day after the date of the

1 issuance of the commissioner's decision. The finance commission  
2 may affirm, vacate, or modify an order issued by the commissioner.  
3 A party aggrieved by a final decision of the finance commission is  
4 entitled to judicial review. The party may appeal the decision of  
5 the finance commission by the filing of a motion for rehearing with  
6 the finance commission and then filing a petition initiating  
7 judicial review.

8 SECTION 4.02. The heading to Subchapter F, Chapter 14,  
9 Finance Code, is amended to read as follows:

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

12 SECTION 4.03. Section 14.252(b), Finance Code, is amended  
13 to read as follows:

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

17 (1) \$100,000 [~~\$50,000~~]; or

18 (2) an amount that is equal to the greater of five  
19 percent of the net worth of the creditor or \$5,000 [~~for each~~  
20 ~~business location at which an element of a violation occurred~~].

21 SECTION 4.04. Section 14.258, Finance Code, is amended to  
22 read as follows:

23 Sec. 14.258. STAY OF PENALTY; SUIT BY ATTORNEY GENERAL  
24 [~~COURT ORDERS~~]. (a) The enforcement of the penalty may be stayed  
25 during the time the order is under judicial review if the person  
26 pays the penalty to the clerk of the court or files a supersedeas  
27 bond with the court in the amount of the penalty. A person who

1 cannot afford to pay the penalty or file the bond may stay the  
2 enforcement by filing an affidavit in the manner required by the  
3 Texas Rules of Civil Procedure for a party who cannot afford to file  
4 security for costs, subject to the right of the commissioner to  
5 contest the affidavit as provided by those rules.

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

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

10 (d) [~~(b)~~] A court that does not sustain the occurrence of a  
11 violation shall order that no penalty is owed.

12 (e) [~~(c)~~] If a person has paid a penalty and a court in a  
13 final judgment reduces or does not uphold the amount, the court  
14 shall order that the appropriate amount plus accrued interest be  
15 remitted to the person. The interest rate is the rate authorized by  
16 Chapter 304, and interest shall be paid for the period beginning on  
17 the date the penalty was paid and ending on the date the penalty is  
18 remitted.

19 SECTION 4.05. Subchapter F, Chapter 14, Finance Code, is  
20 amended by adding Sections 14.261-14.264 to read as follows:

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

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

26 (2) Chapter 394; or

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

1 Subtitle B, Title 4.

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

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

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

12 Sec. 14.262. EFFECT OF ASSURANCE. (a) An assurance of  
13 voluntary compliance is not an admission of a violation of:

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

15 (2) Chapter 394; or

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

18 (b) Unless an assurance of voluntary compliance is  
19 rescinded by agreement or voided by a court for good cause, a  
20 subsequent failure to comply with the assurance is prima facie  
21 evidence of a violation of:

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

23 (2) Chapter 394; or

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

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

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

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

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

19               (2) written notice; and

20               (3) filing of the action alleging the violation.

21       SECTION 4.06. Section 371.303(b), Finance Code, is amended  
22 to read as follows:

23       (b) The commissioner may assess the administrative penalty  
24 in an amount [+

25               ~~[(1) equal to the average profit made by the pawnshop~~  
26 ~~on a business day in the six months before the date the violation~~  
27 ~~occurred, not to exceed \$1,000; or~~

1           ~~[(2) for a violation of Section 371.304,]~~ not to  
2 exceed \$1,000.

3           SECTION 4.07. Subchapter B, Chapter 349, Finance Code, is  
4 amended by adding Section 349.103 to read as follows:

5           Sec. 349.103. LIMITATION ON MULTIPLE RECOVERY OF PENALTIES.

6           (a) An administrative penalty, fine, settlement, or assurance of  
7 voluntary compliance under this title or federal law that is  
8 assessed by or agreed to with an administrative agency or the  
9 attorney general shall be considered and applied as a bar or credit  
10 to recovery of further fines, penalties, or enhanced damages for  
11 substantially the same act, practice, or violation in a suit or  
12 other proceeding brought by a private litigant under this title,  
13 the Business & Commerce Code, or other applicable law of this state.  
14 This section does not apply to a claim for restitution for  
15 unreimbursed actual damages.

16           (b) A suit or other proceeding by a private litigant does  
17 not affect or restrict any state or federal agency from pursuing a  
18 person for any administrative remedy, including an administrative  
19 penalty. An administrative agency of this state, however, shall  
20 consider as a mitigating factor any relief recovered in a private  
21 suit or proceeding when the agency determines an administrative  
22 remedy.

23           ARTICLE 5. SAVINGS BANKS AND LIMITED SAVINGS BANKS

24           SECTION 5.01. Chapter 59, Finance Code, is amended by  
25 adding Section 59.011 to read as follows:

26           Sec. 59.011. LENDER LIABILITY FOR CONSTRUCTION. (a) For  
27 purposes of Chapter 27, Property Code, and Title 16, Property Code,



1 a federally insured financial institution regulated under this code  
2 is not a builder.

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

9 (c) A builder hired by a lender to complete the construction  
10 of a foreclosed home is not liable for any construction defects of  
11 which the builder had no knowledge that existed prior to the  
12 acquisition of the home by the lender, but the builder is subject to  
13 Chapter 27, Property Code, and Title 16, Property Code, for work  
14 performed for the lender subsequent to the acquisition of the home  
15 by the lender.

16 SECTION 5.02. Section 91.002, Finance Code, is amended by  
17 amending Subdivisions (2) and (18) and adding Subdivision (16-a) to  
18 read as follows:

19 (2) "Board" means the board of directors of a savings  
20 bank or the managers of a savings bank organized as a limited  
21 savings bank.

22 (16-a) "Limited savings bank" means a savings bank  
23 electing to be organized as a limited liability company under this  
24 subtitle.

25 (18) "Member" means:

26 (A) [7] with respect to a mutual savings bank, a  
27 person:

1                    (i) [~~(A)~~] holding an account with the  
2 mutual savings bank;

3                    (ii) [~~(B)~~] assuming or obligated on a loan  
4 in which the mutual savings bank has an interest; or

5                    (iii) [~~(C)~~] owning property that secures a  
6 loan in which the mutual savings bank has an interest; or

7                    (B) with respect to a savings bank organized as a  
8 limited savings bank, a person who owns a membership interest in the  
9 limited savings bank.

10            SECTION 5.03. Section 92.001, Finance Code, is amended to  
11 read as follows:

12            Sec. 92.001. APPLICABILITY OF OTHER LAW. (a) With respect  
13 to a savings bank, other than a savings bank organized as a limited  
14 savings bank, organized before January 1, 2006, the [The] Texas  
15 Business Corporation Act, the Texas Miscellaneous Corporation Laws  
16 Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), and  
17 other law relating to general business corporations apply to a  
18 savings bank to the extent not inconsistent with this subtitle or  
19 the proper business of a savings bank.

20            (b) With respect to a savings bank organized as a limited  
21 savings bank before January 1, 2006, the Texas Limited Liability  
22 Company Act (Article 1528n, Vernon's Texas Civil Statutes) and any  
23 other law relating to a limited liability company organized in  
24 Texas apply to a limited savings bank to the extent not inconsistent  
25 with this subtitle or the proper business of a limited savings bank.

26            (c) With respect to a savings bank, other than a savings  
27 bank organized as a limited savings bank, organized on or after

1 January 1, 2006, the provisions of the Business Organizations Code  
2 applicable to general business corporations apply to a savings bank  
3 to the extent not inconsistent with this subtitle or the proper  
4 business of a savings bank.

5 (d) With respect to a savings bank organized as a limited  
6 savings bank on or after January 1, 2006, the provisions of the  
7 Business Organizations Code applicable to a limited liability  
8 company organized in this state apply to a limited savings bank to  
9 the extent not inconsistent with this subtitle or the proper  
10 business of a limited savings bank.

11 (e) With respect to a savings bank or limited savings bank  
12 organized before January 1, 2006, the finance commission may  
13 establish rules permitting a savings bank or limited savings bank  
14 to elect to be governed by the provisions of the Business  
15 Organizations Code to the extent not inconsistent with this  
16 subtitle or the proper business of a savings bank or limited savings  
17 bank.

18 SECTION 5.04. Section 92.101, Finance Code, is amended to  
19 read as follows:

20 Sec. 92.101. PURPOSE OF INCORPORATION. A person may apply  
21 to incorporate a savings bank for the purpose of:

22 (1) purchasing the assets, assuming the liabilities  
23 other than liability to shareholders, and continuing the business  
24 of a financial institution the commissioner considers to be in an  
25 unsafe condition; ~~or~~

26 (2) acquiring an existing financial institution by  
27 merger; or

1           (3) facilitating a reorganization or merger with or  
2 into a savings bank under rules adopted by the finance commission.

3           SECTION 5.05. Section 92.102, Finance Code, is amended by  
4 amending Subsection (d) and adding Subsection (e) to read as  
5 follows:

6           (d) Chapter 2001, Government Code, does not apply to the  
7 application if:

8           (1) [If] the commissioner considers the financial  
9 institution to be reorganized or merged to be in an unsafe  
10 condition; or

11           (2) the savings bank incorporated under this  
12 subchapter does not survive the merger or is facilitating the  
13 continuation of an existing savings bank corporate reorganization  
14 as defined by rules adopted by the finance commission.

15           (e) If the commissioner considers the financial institution  
16 to be reorganized or merged to be in an unsafe condition, [+

17           ~~[(1) Chapter 2001, Government Code, does not apply to~~  
18 ~~the application, and~~

19           ~~[(2)]~~ the application and all information relating to  
20 the application are confidential and not subject to public  
21 disclosure.

22           SECTION 5.06. Section 92.156, Finance Code, is amended by  
23 amending Subsections (a) and (c) and adding Subsection (e) to read  
24 as follows:

25           (a) A savings bank shall maintain ~~[on file with the~~  
26 ~~commissioner]~~ a blanket indemnity bond with an adequate corporate  
27 surety protecting the savings bank from loss by or through

1 dishonest or criminal action or omission, including fraud, theft,  
2 robbery, or burglary, by an officer or employee of the savings bank  
3 or a director of the savings bank when the director performs the  
4 duty of an officer or employee.

5 (c) Subject to rules adopted under Subsection (e), the [The]  
6 board shall [~~and the commissioner must~~] approve:

7 (1) the amount and form of the bond; and

8 (2) the sufficiency of the surety.

9 (e) The finance commission may adopt rules establishing the  
10 amount and form of the bond and the sufficiency of the surety.

11 SECTION 5.07. Section 92.204, Finance Code, is amended to  
12 read as follows:

13 Sec. 92.204. [~~QUALIFICATION UNDER ASSET TEST OR~~] QUALIFIED  
14 THRIFT LENDER TEST. (a) A savings bank must [~~qualify under and~~  
15 ~~continue to meet~~]:

16 (1) qualify under and continue to meet [~~the asset test~~  
17 ~~of Section 7701(a)(19), Internal Revenue Code of 1986 (26 U.S.C.~~  
18 ~~Section 7701(a)(19))~~]; ~~or~~

19 [~~(2)~~] the qualified thrift lender test of Section  
20 10(m), Home Owners' Loan Act (12 U.S.C. Section 1467a(m)); or

21 (2) maintain more than 50 percent of its portfolio  
22 assets in qualified thrift assets on a monthly average basis in at  
23 least nine out of 12 months.

24 (b) For purposes of Subsection (a)(2), "qualified thrift  
25 assets" means:

26 (1) qualified thrift investments as defined by 12  
27 U.S.C. Section 1467a(m)(4)(C); and

1           (2) other assets determined by the commissioner, under  
2 rules adopted by the finance commission, to be substantially  
3 equivalent to qualified thrift investments described by  
4 Subdivision (1) or which further residential lending or community  
5 development.

6           (c) The commissioner may grant temporary or limited  
7 exceptions to the requirements of this section as the commissioner  
8 considers necessary.

9           SECTION 5.08. Section 92.207, Finance Code, is amended to  
10 read as follows:

11           Sec. 92.207. LIMITATION ON ISSUANCE OF SECURITIES. A  
12 savings bank may issue a form of stock, share, account, or  
13 investment certificate only as authorized by this subtitle or as  
14 permitted for a national bank, federal savings and loan  
15 association, federal savings bank, or state bank.

16           SECTION 5.09. Section 92.208, Finance Code, is amended by  
17 amending Subsection (c) and adding Subsection (e) to read as  
18 follows:

19           (c) A savings bank may not purchase, directly or indirectly,  
20 its own issued common stock, except under a stock repurchase plan  
21 approved in advance by the commissioner.

22           (e) Subsections (b) and (c) apply to the securities of the  
23 savings bank's holding company and affiliates.

24           SECTION 5.10. Section 92.211, Finance Code, is amended to  
25 read as follows:

26           Sec. 92.211. DIVIDENDS ON CAPITAL STOCK. (a) The board of  
27 a capital stock savings bank may declare and pay a dividend out of

1 current or retained income, in cash or additional stock, to the  
2 holders of record of the stock outstanding on the date the dividend  
3 is declared.

4 (b) Without the prior approval of the commissioner, a cash  
5 dividend may not be declared by the board of a savings bank that the  
6 commissioner considers:

7 (1) to be in an unsafe condition; or

8 (2) to have less than zero total retained income on the  
9 date of the dividend declaration.

10 SECTION 5.11. Section 92.252(b), Finance Code, is amended  
11 to read as follows:

12 (b) The application to convert must:

13 (1) be filed in the office of the commissioner not  
14 later than the 30th [~~10th~~] day after the date of the meeting; and

15 (2) include a copy of the minutes of the meeting, sworn  
16 to by the secretary or an assistant secretary.

17 SECTION 5.12. Section 92.301(b), Finance Code, is amended  
18 to read as follows:

19 (b) The application to convert must:

20 (1) be submitted to the commissioner and mailed to the  
21 appropriate banking agency not later than the 30th [~~10th~~] day after  
22 the date of the meeting; and

23 (2) include a copy of the minutes of the meeting, sworn  
24 to by the secretary or an assistant secretary.

25 SECTION 5.13. Sections 92.302(b) and (c), Finance Code, are  
26 amended to read as follows:

27 (b) The directors, or the president and secretary, shall

1 execute two copies of an application for certificate of  
2 incorporation as provided by Subchapter B.

3 (c) Each director, or the president and secretary, shall  
4 sign and acknowledge the application for certificate of  
5 incorporation as a subscriber and shall sign and acknowledge the  
6 bylaws as an incorporator.

7 SECTION 5.14. Section 92.351(a), Finance Code, is amended  
8 to read as follows:

9 (a) A savings bank may reorganize, merge, or consolidate  
10 with a corporation, another financial institution, or another  
11 entity under a plan adopted by the board.

12 SECTION 5.15. Chapter 92, Finance Code, is amended by  
13 adding Subchapter M to read as follows:

14 SUBCHAPTER M. LIMITED SAVINGS BANK

15 Sec. 92.601. APPLICATION TO ORGANIZE. (a) Five or more  
16 adult residents of this state may apply to organize a savings bank  
17 as a limited savings bank by submitting to the commissioner:

18 (1) an application to organize a limited savings bank  
19 that is:

20 (A) in a form specified by the commissioner; and

21 (B) signed by each organizer; and

22 (2) the filing fee.

23 (b) An application must contain:

24 (1) two copies of the limited savings bank's  
25 certificate of formation containing:

26 (A) the name of the savings bank;

27 (B) the location of the principal office;



1                   (C) the names and addresses of the initial  
2 managers; and

3                   (D) to the extent not inconsistent with this  
4 subtitle, the proper business of a savings bank, or a rule adopted  
5 by the finance commission related to savings banks, other  
6 provisions included in:

7                   (i) the articles of organization of a  
8 limited liability company organized under the Texas Limited  
9 Liability Company Act (Article 1528n, Vernon's Texas Civil  
10 Statutes) if the limited savings bank was organized before January  
11 1, 2006; or

12                   (ii) the certificate of formation of a  
13 limited liability company organized under Chapter 101, Business  
14 Organizations Code, if:

15                   (a) the limited savings bank was  
16 organized on or after January 1, 2006; or

17                   (b) the organizers elect to include  
18 those provisions, if the limited savings bank was organized before  
19 January 1, 2006;

20                   (2) two copies of the savings bank's company  
21 agreement;

22                   (3) data sufficiently detailed and comprehensive in  
23 nature to enable the commissioner to make findings under Section  
24 92.058, including statements, exhibits, and maps;

25                   (4) financial information about each applicant,  
26 organizer, manager, officer, or member that the finance commission  
27 requires by rule; and

1           (5) other information relating to the savings bank and  
2 its operation that the finance commission requires by rule.

3           (c) Financial information described by Subsection (b) is  
4 confidential and not subject to public disclosure unless the  
5 commissioner finds that disclosure is necessary and in the public  
6 interest.

7           (d) The statement of fact must be signed and sworn to.

8           (e) Subchapter B, Chapter 92, applies to the organization of  
9 a limited savings bank except to the extent inconsistent with this  
10 section.

11           Sec. 92.602. LIABILITY OF MEMBERS AND MANAGERS. A member,  
12 transferee of a member, or manager of a limited savings bank is not  
13 liable for a debt, obligation, or liability of the limited savings  
14 bank, including a debt, obligation, or liability under a judgment,  
15 decree, or order of a court. A member or a manager of a limited  
16 savings bank is not a proper party to a proceeding by or against a  
17 limited savings bank unless the object of the proceeding is to  
18 enforce a member's or manager's right against or liability to a  
19 limited savings bank.

20           Sec. 92.603. CONTRIBUTIONS. A member of a limited savings  
21 bank is obligated to make contributions as required in the company  
22 agreement.

23           Sec. 92.604. MANAGERS OF A LIMITED SAVINGS BANK. (a)  
24 Management of a limited savings bank shall be exercised by a board  
25 of managers consisting of not fewer than five or more than 21  
26 persons.

27           (b) A manager must meet the qualifications for a director

1 under Section 92.153.

2 (c) The governing documents of a limited savings bank may  
3 use "director" instead of "manager" and "board" instead of "board  
4 of managers."

5 Sec. 92.605. WITHDRAWAL OR REDUCTION OF MEMBER'S  
6 CONTRIBUTION. (a) A member may not receive from a limited savings  
7 bank any part of the member's contribution except as provided by  
8 rule adopted by the finance commission regulating withdrawal or  
9 reduction.

10 (b) A member may not receive any part of the member's  
11 contribution if, after the withdrawal or reduction, the capital of  
12 the savings bank would be reduced to less than the minimum capital  
13 established for the incorporation or operation of a savings bank by  
14 this subtitle or a rule adopted under this subtitle.

15 Sec. 92.606. COMPANY AGREEMENT OF LIMITED SAVINGS BANK.  
16 (a) A limited savings bank shall adopt a company agreement that  
17 contains provisions regulating the management and organization of  
18 the limited savings bank. The agreement is subject to the approval  
19 of the commissioner and must contain provisions the finance  
20 commission may require by a rule adopted under this subchapter.

21 (b) At the option of the limited savings bank, the term  
22 "bylaws" may be substituted for the term "company agreement."

23 Sec. 92.607. DISSOLUTION. (a) A limited savings bank  
24 organized under this chapter is dissolved on:

25 (1) the expiration of the period fixed for the  
26 duration of the limited savings bank; or

27 (2) the occurrence of events specified in the

1 certificate of formation or company agreement to cause dissolution.

2 (b) A dissolution under this section is considered a  
3 resolution to close the savings bank under Section 96.251.

4 Sec. 92.608. ALLOCATION OF PROFITS AND LOSSES. The profits  
5 and losses of a limited savings bank may be allocated among the  
6 members and among classes of members as provided by the company  
7 agreement. Without the prior written approval of the commissioner  
8 to use a different allocation method, the profits and losses must be  
9 allocated according to the relative interests of the members in the  
10 limited savings bank.

11 Sec. 92.609. DISTRIBUTIONS. Subject to rules adopted by  
12 the finance commission, distributions of cash or other assets of a  
13 limited savings bank may be made to the members as provided by the  
14 company agreement. Without the prior written approval of the  
15 commissioner to use a different distribution method, distributions  
16 must be made to the members according to the relative interests of  
17 the members as reflected in the governing documents of the limited  
18 savings bank filed with and approved by the commissioner.

19 Sec. 92.610. AMENDMENT OF GOVERNING DOCUMENTS. (a) A  
20 limited savings bank may amend its certificate of formation by a  
21 majority vote of the members cast at any annual meeting or a special  
22 meeting called for that purpose unless the certificate of formation  
23 requires a higher percentage.

24 (b) If provided in the governing documents, the company  
25 agreement of a limited savings bank may be amended by a majority  
26 vote of the board of managers unless the governing documents  
27 require a higher percentage. In the absence of an express provision

1 in the governing documents, the company agreement may be amended by  
2 a majority vote of the members cast at any annual meeting or special  
3 meeting called for that purpose.

4 (c) An amendment to the governing documents may not take  
5 effect before it is filed with and approved by the commissioner.

6 Sec. 92.611. APPLICATION OF OTHER PROVISIONS TO LIMITED  
7 SAVINGS BANKS; MISCELLANEOUS PROVISIONS. (a) This subtitle  
8 applies to a savings bank organized as a limited savings bank under  
9 this subchapter. In the event of a conflict between this subchapter  
10 and a provision of this subtitle, this subchapter controls unless  
11 the finance commission by rule provides that this subtitle  
12 controls.

13 (b) For purposes of provisions of this chapter other than  
14 this subchapter, as the context requires:

15 (1) a manager is considered to be a director and the  
16 board of managers is considered to be the board of directors;

17 (2) a member is considered to be a shareholder; and

18 (3) a distribution is considered to be a dividend.

19 (c) A reference in a statute or rule to a savings bank  
20 includes a savings bank organized as a limited savings bank unless  
21 the context clearly requires that a limited savings bank is not  
22 included within the term or the provision contains express language  
23 excluding a limited savings bank.

24 (d) In this subchapter, "governing document" means a  
25 limited savings bank's certificate of formation or company  
26 agreement.

27 SECTION 5.16. Section 93.001(c), Finance Code, is amended

1 to read as follows:

2 (c) A savings bank may:

3 (1) sue and be sued in its corporate name;

4 (2) adopt and operate a reasonable bonus plan,  
5 profit-sharing plan, stock bonus plan, stock option plan, pension  
6 plan, or similar incentive plan for its directors, officers, or  
7 employees, subject to any limitations under this subtitle or rules  
8 adopted under this subtitle;

9 (3) make reasonable donations for the public welfare  
10 or for a charitable, scientific, religious, or educational purpose;

11 (4) pledge its assets to secure deposits of public  
12 money of the United States, if required by the United States,  
13 including revenue and money the deposit of which is subject to  
14 control or regulation of the United States;

15 (5) pledge its assets to secure deposits of public  
16 money of any state or of a political corporation or political  
17 subdivision of any state or of any other entity that serves a public  
18 purpose according to rules adopted by the finance commission;

19 (6) become a member of or deal with any corporation or  
20 agency of the United States or this state, to the extent that the  
21 corporation or agency assists in furthering the purposes or powers  
22 of savings banks, and for that purpose may purchase stock or  
23 securities of the corporation or agency or deposit money with the  
24 corporation or agency and may comply with any other condition of  
25 membership credit;

26 (7) become a member of a federal home loan bank or the  
27 Federal Reserve System;

1           (8) hold title to any assets acquired because of the  
2 collection or liquidation of a loan, investment, or discount and  
3 may administer those assets as necessary;

4           (9) receive and repay any deposit or account in  
5 accordance with this subtitle and rules of the finance commission;  
6 and

7           (10) lend and invest its money as authorized by this  
8 subtitle and rules of the finance commission.

9           SECTION 5.17. Section 93.008, Finance Code, is amended to  
10 read as follows:

11           Sec. 93.008. POWERS RELATIVE TO OTHER FINANCIAL  
12 INSTITUTIONS. (a) Subject to limitations prescribed by rule of the  
13 finance commission, a savings bank may make a loan or investment or  
14 engage in an activity permitted:

15           (1) under state law for a bank or savings and loan  
16 association; or

17           (2) under federal law for a federal savings and loan  
18 association, savings bank, or national bank if the financial  
19 institution's principal office is located in this state.

20           (b) Notwithstanding any other law, a savings bank organized  
21 and chartered under this chapter may perform an act, own property,  
22 or offer a product or service that is at the time permissible within  
23 the United States for a depository institution organized under  
24 federal law or the law of this state or another state if the  
25 commissioner approves the exercise of the power as provided by this  
26 section, subject to the same limitations and restrictions  
27 applicable to the other depository institution by pertinent law,

1 except to the extent the limitations and restrictions are modified  
2 by rules adopted under Subsection (e). This section may not be used  
3 to alter or negate the application of the laws of this state with  
4 respect to:

5 (1) establishment and maintenance of a branch in this  
6 state or another state or country;

7 (2) permissible interest rates and loan fees  
8 chargeable in this state;

9 (3) fiduciary duties owed to a client or customer by  
10 the bank in its capacity as fiduciary in this state;

11 (4) consumer protection laws applicable to  
12 transactions in this state; or

13 (5) compliance with the qualified thrift assets test  
14 contained in Section 92.204.

15 (c) A savings bank that intends to exercise a power,  
16 directly or through a subsidiary, granted by Subsection (b) that is  
17 not otherwise authorized for savings banks under the statutes of  
18 this state shall submit a letter to the commissioner describing in  
19 detail the power that the savings bank proposes to exercise and the  
20 specific authority of another depository institution to exercise  
21 the power. The savings bank shall attach copies, if available, of  
22 relevant law, regulations, and interpretive letters. The  
23 commissioner may deny the bank from exercising the power if the  
24 commissioner finds that:

25 (1) specific authority does not exist for another  
26 depository institution to exercise the proposed power;

27 (2) if the savings bank is insured by the Federal



1 Deposit Insurance Corporation, the savings bank is prohibited from  
2 exercising the power under Section 24, Federal Deposit Insurance  
3 Act (12 U.S.C. Section 1831a), and related regulations;

4 (3) the exercise of the power by the bank would  
5 adversely affect the safety and soundness of the bank; or

6 (4) at the time the application is made, the savings  
7 bank is not well capitalized and well managed.

8 (d) A savings bank that is denied the requested power by the  
9 commissioner under this section may appeal. The notice of appeal  
10 must be in writing and must be received by the commissioner not  
11 later than the 30th day after the date of the denial. An appeal  
12 under this section is a contested case under Chapter 2001,  
13 Government Code.

14 (e) To effectuate this section, the finance commission may  
15 adopt rules implementing the method or manner in which a savings  
16 bank exercises specific powers granted under this section,  
17 including rules regarding the exercise of a power that would be  
18 prohibited to savings banks under state law but for this section.

19 (f) The exercise of a power by a savings bank in compliance  
20 with and in the manner authorized by this section is not a violation  
21 of any statute of this state.

22 SECTION 5.18. Section 94.201, Finance Code, is amended to  
23 read as follows:

24 Sec. 94.201. REQUIRED INVESTMENTS. A savings bank shall  
25 maintain in the savings bank's portfolio not less than 15 percent of  
26 the savings bank's deposits from its local service area designated  
27 under Section 94.202 in:

1           (1) first and second lien residential mortgage loans,  
2 home equity loans, or foreclosed residential mortgage loans  
3 originated in the savings bank's local service area;

4           (2) home improvement loans;

5           (3) interim residential construction loans;

6           (4) mortgage-backed securities secured by loans in the  
7 savings bank's local service area; ~~and~~

8           (5) loans for community reinvestment; and

9           (6) other loans made to customers in the savings bank's  
10 local service area that meet the definition of qualified thrift  
11 assets under Section 92.204.

12           SECTION 5.19. Section 96.053(a), Finance Code, is amended  
13 to read as follows:

14           (a) Before March [~~February~~] 1 of each year, a savings bank  
15 shall provide to the commissioner on a form to be prescribed and  
16 furnished by the commissioner a written report of its affairs and  
17 operations, including a complete statement of its financial  
18 condition with a statement of income and expenses since its last  
19 annual report under this section. The report must be signed by the  
20 president, vice president, or secretary of the savings bank.

21           SECTION 5.20. Sections 97.001-97.007, Finance Code, are  
22 designated as Subchapter A, Chapter 97, Finance Code, and a  
23 subchapter heading is added to read as follows:

24           SUBCHAPTER A. GENERAL PROVISIONS APPLICABLE TO HOLDING COMPANIES

25           SECTION 5.21. Chapter 97, Finance Code, is amended by  
26 adding Subchapter B to read as follows:

1                   SUBCHAPTER B. MUTUAL HOLDING COMPANIES

2                   Sec. 97.051. REORGANIZATION TO BECOME MUTUAL HOLDING  
3 COMPANY. (a) Notwithstanding any other law, a savings bank may be  
4 reorganized as a mutual holding company by submitting to the  
5 commissioner an application for approval of reorganization.

6                   (b) Before submission, an application for reorganization  
7 must be approved by a majority vote of the members or shareholders  
8 of the savings bank cast at an annual meeting or a special meeting  
9 called to consider the reorganization.

10                  Sec. 97.052. APPLICATION FOR APPROVAL OF REORGANIZATION.  
11 The application for approval of reorganization must contain:

12                   (1) a brief statement summarizing a reorganization  
13 plan;

14                   (2) two copies of the proposed articles of  
15 incorporation of the subsidiary savings bank acknowledged by the  
16 incorporators of the subsidiary savings bank;

17                   (3) two copies of the proposed bylaws of the savings  
18 bank;

19                   (4) a statement that the plan of reorganization was  
20 advised, authorized, and approved by the savings bank in the manner  
21 and by the vote required by its charter and the laws of this state;  
22 and

23                   (5) a statement of the manner of approval.

24                  Sec. 97.053. PLAN OF REORGANIZATION. (a) The plan of  
25 reorganization must provide that:

26                   (1) a subsidiary savings bank shall:

27                           (A) be incorporated under Subchapter B, Chapter

1 92; or

2 (B) on prior approval of the commissioner, be  
3 incorporated under Subchapter C, Chapter 92;

4 (2) the savings bank shall transfer a substantial part  
5 of its assets to the subsidiary savings bank, and the subsidiary  
6 savings bank shall assume a substantial part of the savings bank's  
7 liabilities, including all depository liabilities;

8 (3) as a result of the reorganization, the mutual  
9 holding company must hold more than 50 percent of the stock of the  
10 subsidiary savings bank; and

11 (4) after transfer and assumption, persons with prior  
12 corresponding rights as depositors or creditors against a savings  
13 bank have the same rights with respect to the mutual holding company  
14 and the subsidiary savings bank.

15 (b) The plan of reorganization must set forth the necessary  
16 corporate steps for the savings bank to reorganize into a mutual  
17 holding company, including:

18 (1) all required charter amendments; and

19 (2) a description of the corporate management of the  
20 reorganized mutual holding company.

21 (c) The plan of reorganization may contain any other  
22 provision not inconsistent with law or finance commission rules.

23 ARTICLE 6. AMENDMENTS TO MORTGAGE BROKER LICENSE ACT

24 SECTION 6.01. Section 156.005, Finance Code, is amended to  
25 read as follows:

26 Sec. 156.005. AFFILIATED BUSINESS ARRANGEMENTS. Unless  
27 prohibited by federal or state law, this chapter may not be

1 construed to prevent affiliated or controlled business  
2 arrangements or loan origination services by or between mortgage  
3 brokers and other professionals if the mortgage broker complies  
4 with all applicable federal and state laws permitting those  
5 arrangements or services.

6 SECTION 6.02. Section 156.102(d), Finance Code, is amended  
7 to read as follows:

8 (d) The finance commission shall consult with the  
9 commissioner [~~mortgage broker advisory committee~~] when proposing  
10 and adopting rules under this chapter.

11 SECTION 6.03. Section 156.104, Finance Code, is amended by  
12 amending Subsection (h) and adding Subsections (j) and (k) to read  
13 as follows:

14 (h) In addition to other powers and duties delegated to it  
15 by the commissioner, the advisory committee shall advise the  
16 [~~finance commission and~~] commissioner with respect to:

17 (1) the proposal and adoption of rules relating to:

18 (A) the licensing of mortgage brokers and loan  
19 officers;

20 (B) the education and experience requirements  
21 for licensing mortgage brokers and loan officers;

22 (C) conduct and ethics of mortgage brokers and  
23 loan officers;

24 (D) continuing education for licensed mortgage  
25 brokers and loan officers and the types of courses acceptable as  
26 continuing education courses under this chapter; and

27 (E) the granting or denying of an application or

1 request for renewal for a mortgage broker license or loan officer  
2 license;

3 (2) the form of or format for any applications or other  
4 documents under this chapter; and

5 (3) the interpretation, implementation, and  
6 enforcement of this chapter.

7 (j) The advisory committee shall take a record vote on any  
8 matter described by Subsection (h)(1). The commissioner shall  
9 inform the finance commission of:

10 (1) the result of the vote; and

11 (2) any additional information the commissioner  
12 considers necessary to ensure the finance commission is  
13 sufficiently notified of the advisory committee's recommendations.

14 (k) A record vote taken by the advisory committee under  
15 Subsection (j) is only a recommendation and does not supersede the  
16 rulemaking authority of the finance commission under this  
17 subchapter.

18 SECTION 6.04. Section 156.201(c), Finance Code, is amended  
19 to read as follows:

20 (c) Each mortgage broker licensed under this chapter is  
21 responsible to the commissioner and members of the public for any  
22 act or conduct performed [~~under this chapter~~] by the mortgage  
23 broker or a loan officer sponsored by or acting for the mortgage  
24 broker in connection with:

25 (1) the origination of a mortgage loan; or

26 (2) a transaction that is related to the origination  
27 of a mortgage loan in which the mortgage broker knew or should have

1 known of the transaction.

2 SECTION 6.05. Section 156.202, Finance Code, is amended to  
3 read as follows:

4 Sec. 156.202. EXEMPTIONS. This chapter does not apply to:

5 (1) any of the following entities or an employee of any  
6 of the following entities provided the employee is acting for the  
7 benefit of the employer:

8 (A) a bank, savings bank, or savings and loan  
9 association, or a subsidiary or an affiliate of a bank, savings  
10 bank, or savings and loan association;

11 (B) a state or federal credit union, or a  
12 subsidiary, affiliate, or credit union service organization of a  
13 state or federal credit union;

14 (C) an insurance company licensed or authorized  
15 to do business in this state under the Insurance Code;

16 (D) a mortgage banker registered under Chapter  
17 157;

18 (E) an organization that qualifies for an  
19 exemption from state franchise and sales tax as a 501(c)(3)  
20 organization;

21 (F) a Farm Credit System institution; or

22 (G) a political subdivision of this state  
23 involved in affordable home ownership programs;

24 (2) an individual who makes a mortgage loan from the  
25 individual's own funds to a spouse, former spouse, or persons in the  
26 lineal line of consanguinity of the individual lending the money;

27 (3) an owner of real property who makes a mortgage loan

1 to a purchaser of the property for all or part of the purchase price  
2 of the real estate against which the mortgage is secured; or

3 (4) an individual who:

4 (A) makes a mortgage loan from the individual's  
5 own funds;

6 (B) is not an authorized lender under Chapter  
7 342, Finance Code; and

8 (C) does not regularly engage in the business of  
9 making or brokering mortgage loans.

10 SECTION 6.06. Section 156.203(d), Finance Code, is amended  
11 to read as follows:

12 (d) An application fee under this section is not refundable  
13 and may not be credited or applied to any other fee or indebtedness  
14 owed by the person paying the fee.

15 SECTION 6.07. Sections 156.204(a) and (c), Finance Code, as  
16 amended by Chapters 170 and 171, Acts of the 78th Legislature,  
17 Regular Session, 2003, are reenacted and amended to read as  
18 follows:

19 (a) To be eligible to be licensed as a mortgage broker a  
20 person must:

21 (1) be an individual who is at least 18 years of age;

22 (2) be a citizen of the United States or a lawfully  
23 admitted alien;

24 (3) maintain a physical office in this state and  
25 designate that office in the application;

26 (4) provide the commissioner with satisfactory  
27 evidence that the applicant satisfies one of the following:



1 (A) the person has received a bachelor's degree  
2 in an area relating to finance, banking, or business administration  
3 from an accredited college or university and has 18 months of  
4 experience in the mortgage or lending field as evidenced by  
5 documentary proof of full-time employment as a mortgage broker or  
6 loan officer with a mortgage broker or a person exempt under Section  
7 156.202;

8 (B) the person is licensed in this state as:

9 (i) an active real estate broker under  
10 Chapter 1101, Occupations Code;

11 (ii) an active attorney; or

12 (iii) a local recording agent or insurance  
13 solicitor or agent for a legal reserve life insurance company under  
14 Chapter 21, Insurance Code, or holds an equivalent license under  
15 Chapter 21, Insurance Code; or

16 (C) the person has three years of experience in  
17 the mortgage lending field as evidenced by documentary proof of  
18 full-time employment as a loan officer with a mortgage broker or a  
19 person exempt under Section 156.202;

20 (5) provide the commissioner with satisfactory  
21 evidence of:

22 (A) having passed an examination, offered by a  
23 testing service or company approved by the finance commission, that  
24 demonstrates knowledge of:

25 (i) the mortgage industry; and

26 (ii) the role and responsibilities of a  
27 mortgage broker; and

1 (B) compliance with the financial requirements  
2 of this chapter; [~~and~~]

3 (6) not have been convicted of a criminal offense that  
4 the commissioner determines directly relates to the occupation of a  
5 mortgage broker as provided by Chapter 53, Occupations Code;

6 (7) satisfy the commissioner as to the individual's  
7 good moral character, including the individual's honesty,  
8 trustworthiness, and integrity; and

9 (8) not be in violation of this chapter, a rule adopted  
10 under this chapter, or any order previously issued to the  
11 individual by the commissioner.

12 (c) To be eligible to be licensed as a loan officer a person  
13 must:

14 (1) be an individual who is at least 18 years of age;

15 (2) be a citizen of the United States or a lawfully  
16 admitted alien;

17 (3) designate in the application the name of the  
18 mortgage broker sponsoring the loan officer;

19 (4) provide the commissioner with satisfactory  
20 evidence that the applicant satisfies one of the following:

21 (A) the person meets one of the requirements  
22 described by Subsection (a)(4);

23 (B) the person has successfully completed 30 [~~15~~]  
24 hours of education courses approved by the commissioner under this  
25 section;

26 (C) the person has 18 months of experience as a  
27 loan officer as evidenced by documentary proof of full-time

1 employment as a loan officer with a mortgage broker or a person  
2 exempt under Section 156.202; or

3 (D) for applications received prior to January 1,  
4 2000, the mortgage broker that will sponsor the applicant provides  
5 a certification under oath that the applicant has been provided  
6 necessary and appropriate education and training regarding all  
7 applicable state and federal law and regulations relating to  
8 mortgage loans;

9 (5) not have been convicted of a criminal offense that  
10 the commissioner determines directly relates to the occupation of a  
11 loan officer as provided by Chapter 53, Occupations Code;

12 (6) satisfy the commissioner as to the individual's  
13 good moral character, including the individual's honesty,  
14 trustworthiness, and integrity; ~~and~~

15 (7) ~~(6)~~ provide the commissioner with satisfactory  
16 evidence of having passed an examination, offered by a testing  
17 service or company approved by the finance commission, that  
18 demonstrates knowledge of:

19 (A) the mortgage industry; and

20 (B) the role and responsibilities of a loan  
21 officer; and ~~and~~

22 (8) ~~(7)~~ not be in violation of this chapter, a rule  
23 adopted under this chapter, or any order previously issued to the  
24 individual by the commissioner.

25 SECTION 6.08. Sections 156.205(a) and (b), Finance Code,  
26 are amended to read as follows:

27 (a) In this section, "net assets" means the difference

1 between total assets and total liabilities, as determined by  
2 generally acceptable accounting principles, and does not include  
3 any assets that are exempt under state or federal law. All assets  
4 and liabilities are subject to verification by the commissioner.

5 (b) A mortgage broker must maintain net assets of at least  
6 \$25,000 or a surety bond in the amount of at least \$50,000. The term  
7 of the surety bond must coincide with the term of the license. The  
8 finance commission may adopt rules establishing the terms and  
9 conditions of the surety bond and the qualifications of the surety.

10 SECTION 6.09. Section 156.208, Finance Code, is amended by  
11 amending Subsection (e) and adding Subsection (i) to read as  
12 follows:

13 (e) A renewal fee is not refundable and may not be credited  
14 or applied to any other fee or indebtedness owed by the person  
15 paying the fee.

16 (i) The commissioner may deny the renewal of a mortgage  
17 broker license or a loan officer license if:

18 (1) the mortgage broker or loan officer is in  
19 violation of this chapter, a rule adopted under this chapter, or any  
20 order previously issued to the individual by the commissioner; or

21 (2) the mortgage broker or loan officer is in default  
22 in the payment of any administrative penalty, fee, charge, or other  
23 indebtedness owed under this title.

24 SECTION 6.10. Sections 156.2081(c)-(f), Finance Code, are  
25 amended to read as follows:

26 (c) A person whose license has been expired for 91 days or  
27 more may not renew the license. The person may obtain a new license

1 by complying with the requirements and procedures for obtaining an  
2 original license. ~~[more than 90 days but less than one year but who~~  
3 ~~is otherwise eligible to renew a license may renew the license by~~  
4 ~~paying to the commissioner a renewal fee that is equal to two times~~  
5 ~~the normally required renewal fee.~~

6 ~~[(d) A person whose license has been expired for one year or~~  
7 ~~more may not renew the license. The person may obtain a new license~~  
8 ~~by complying with the requirements and procedures for obtaining an~~  
9 ~~original license.]~~

10 (d) ~~[(e)]~~ A person who was licensed in this state, moved to  
11 another state, and is currently licensed and has been in practice in  
12 the other state for the two years preceding the date of application  
13 may obtain a new license by paying to the commissioner a fee that is  
14 equal to two times the normally required renewal fee for the  
15 license.

16 (e) ~~[(f)]~~ Not later than the 60th ~~[30th]~~ day before the date  
17 a person's license is scheduled to expire, the commissioner shall  
18 send written notice of the impending expiration to the person at the  
19 person's last known address according to the records of the  
20 Department of Savings and Mortgage Lending ~~[Loan Department]~~.

21 SECTION 6.11. Section 156.209, Finance Code, is amended by  
22 amending Subsection (c) and adding Subsections (f) and (g) to read  
23 as follows:

24 (c) The designated hearings officer shall set the time and  
25 place for a hearing requested under Subsection (b) not later than  
26 the 90th ~~[30th]~~ day after the date on which the appeal is received.  
27 The hearings officer shall provide at least 10 days' notice of the

1 hearing to the applicant or person requesting the renewal. The time  
2 of the hearing may be continued periodically with the consent of the  
3 applicant or person requesting the renewal. After the hearing, the  
4 commissioner shall enter an order from the findings of fact,  
5 conclusions of law, and recommendations of the hearings officer.

6 (f) A person who requests a hearing under this section shall  
7 be required to pay a deposit to secure the payment of the costs of  
8 the hearing in an amount to be determined by the commissioner not to  
9 exceed \$500. The entire deposit shall be refunded to the person if  
10 the person prevails in the contested case hearing. If the person  
11 does not prevail, any portion of the deposit in excess of the costs  
12 of the hearing assessed against that person shall be refundable.

13 (g) A person whose application for a license has been denied  
14 is not eligible to be licensed for a period of two years after the  
15 date the denial becomes final, or a shorter period determined by the  
16 commissioner after evaluating the specific circumstances of the  
17 person's subsequent application. The finance commission may adopt  
18 rules to provide conditions for which the commissioner may shorten  
19 the time of disqualification.

20 SECTION 6.12. Section 156.211(c), Finance Code, is amended  
21 to read as follows:

22 (c) A fee under this section is not refundable and may not be  
23 credited or applied to any other fee or indebtedness owed by the  
24 person paying the fee.

25 SECTION 6.13. Section 156.301, Finance Code, is amended by  
26 adding Subsection (g) to read as follows:

27 (g) The commissioner may share information gathered during

1 an investigation or inspection with any state or federal agency.

2 SECTION 6.14. Subchapter D, Chapter 156, Finance Code, is  
3 amended by adding Section 156.3011 to read as follows:

4 Sec. 156.3011. ISSUANCE AND ENFORCEMENT OF SUBPOENA. (a)  
5 During an investigation, the commissioner may issue a subpoena that  
6 is addressed to a peace officer of this state or other person  
7 authorized by law to serve citation or perfect service. The  
8 subpoena may require a person to give a deposition, produce  
9 documents, or both.

10 (b) If a person disobeys a subpoena or if a person appearing  
11 in a deposition in connection with the investigation refuses to  
12 testify, the commissioner may petition a district court in Travis  
13 County to issue an order requiring the person to obey the subpoena,  
14 testify, or produce documents relating to the matter. The court  
15 shall promptly set an application to enforce a subpoena issued  
16 under Subsection (a) for hearing and shall cause notice of the  
17 application and the hearing to be served upon the person to whom the  
18 subpoena is directed.

19 SECTION 6.15. Section 156.303, Finance Code, is amended by  
20 amending Subsection (a) and adding Subsections (f)-(i) to read as  
21 follows:

22 (a) The commissioner may order disciplinary action against  
23 a licensed mortgage broker or a licensed loan officer when the  
24 commissioner, after a hearing, has determined that the person:

25 (1) obtained a license, including a renewal of a  
26 license, under this chapter through a false or fraudulent  
27 representation or made a material misrepresentation in an

1 application for a license or for the renewal of a license under this  
2 chapter;

3 (2) published or caused to be published an  
4 advertisement related to the business of a mortgage broker or loan  
5 officer that:

6 (A) is misleading;

7 (B) is likely to deceive the public;

8 (C) in any manner tends to create a misleading  
9 impression;

10 (D) fails to identify as a mortgage broker or  
11 loan officer the person causing the advertisement to be published;  
12 or

13 (E) violates federal or state law;

14 (3) while performing an act for which a license under  
15 this chapter is required, engaged in conduct that constitutes  
16 improper, fraudulent, or dishonest dealings;

17 (4) entered a plea of guilty or nolo contendere to, or  
18 is convicted of, a criminal offense that is a felony or that  
19 involves fraud or moral turpitude in a court of this or another  
20 state or in a federal court [~~failed to notify the commissioner not~~  
21 ~~later than the 30th day after the date of the final conviction if~~  
22 ~~the person, in a court of this or another state or in a federal~~  
23 ~~court, has been convicted of or entered a plea of guilty or nolo~~  
24 ~~contendere to a felony or a criminal offense involving fraud~~];

25 (5) failed to use a fee collected in advance of closing  
26 of a mortgage loan for a purpose for which the fee was paid;

27 (6) charged or received, directly or indirectly, a fee



1 for assisting a mortgage applicant in obtaining a mortgage loan  
2 before all of the services that the person agreed to perform for the  
3 mortgage applicant are completed, and the proceeds of the mortgage  
4 loan have been disbursed to or on behalf of the mortgage applicant,  
5 except as provided by Section 156.304;

6 (7) failed within a reasonable time to honor a check  
7 issued to the commissioner after the commissioner has mailed a  
8 request for payment by certified mail to the person's last known  
9 business address as reflected by the commissioner's records;

10 (8) paid compensation to a person who is not licensed  
11 or exempt under this chapter for acts for which a license under this  
12 chapter is required;

13 (9) induced or attempted to induce a party to a  
14 contract to breach the contract so the person may make a mortgage  
15 loan;

16 (10) published or circulated an unjustified or  
17 unwarranted threat of legal proceedings in matters related to the  
18 person's actions or services as a mortgage broker or loan officer,  
19 as applicable;

20 (11) established an association, by employment or  
21 otherwise, with a person not licensed or exempt under this chapter  
22 who was expected or required to act as a mortgage broker or loan  
23 officer;

24 (12) aided, abetted, or conspired with a person to  
25 circumvent the requirements of this chapter;

26 (13) acted in the dual capacity of a mortgage broker or  
27 loan officer and real estate broker, salesperson, or attorney in a

1 transaction without the knowledge and written consent of the  
2 mortgage applicant or in violation of applicable requirements under  
3 federal law;

4 (14) discriminated against a prospective borrower on  
5 the basis of race, color, religion, sex, national origin, ancestry,  
6 familial status, or a disability;

7 (15) failed or refused on demand to:

8 (A) produce a document, book, or record  
9 concerning a mortgage loan transaction conducted by the mortgage  
10 broker or loan officer for inspection by the commissioner or the  
11 commissioner's authorized personnel or representative;

12 (B) give the commissioner or the commissioner's  
13 authorized personnel or representative free access to the books or  
14 records relating to the person's business kept by an officer,  
15 agent, or employee of the person or any business entity through  
16 which the person conducts mortgage brokerage activities, including  
17 a subsidiary or holding company affiliate; or

18 (C) provide information requested by the  
19 commissioner as a result of a formal or informal complaint made to  
20 the commissioner;

21 (16) failed without just cause to surrender, on  
22 demand, a copy of a document or other instrument coming into the  
23 person's possession that was provided to the person by another  
24 person making the demand or that the person making the demand is  
25 under law entitled to receive; or

26 (17) disregarded or violated this chapter, a rule  
27 adopted by the finance commission under this chapter, or an order

1 issued by the commissioner under this chapter.

2 (f) For purposes of Subsection (a), a person is considered  
3 convicted if a sentence is imposed on the person, the person  
4 receives community supervision, including deferred adjudication  
5 community supervision, or the court defers final disposition of the  
6 person's case.

7 (g) If a person fails to pay an administrative penalty that  
8 has become final or fails to comply with an order of the  
9 commissioner that has become final, in addition to any other remedy  
10 provided under law the commissioner, on not less than 10 days'  
11 notice to the person, may without a prior hearing suspend the  
12 person's mortgage broker license or loan officer license. The  
13 suspension shall continue until the person has complied with the  
14 cease and desist order or paid the administrative penalty. During  
15 the period of suspension, the person may not originate a mortgage  
16 loan and all compensation received by the person during the period  
17 of suspension is subject to forfeiture as provided by Section  
18 156.406(b).

19 (h) An order of suspension under Subsection (g) may be  
20 appealed. An appeal is a contested case governed by Chapter 2001,  
21 Government Code. A hearing of an appeal of an order of suspension  
22 issued under Subsection (g) shall be held not later than the 15th  
23 day after the date of receipt of the notice of appeal. The  
24 appellant shall be provided at least three days' notice of the time  
25 and place of the hearing.

26 (i) An order revoking the license of a mortgage broker or  
27 loan officer may provide that the person is prohibited, without

1 obtaining prior written consent of the commissioner, from:

2 (1) engaging in the business of originating or making  
3 mortgage loans;

4 (2) being an employee, officer, director, manager,  
5 shareholder, member, agent, contractor, or processor of a mortgage  
6 broker or loan officer; or

7 (3) otherwise affiliating with a person for the  
8 purpose of engaging in the business of originating or making  
9 mortgage loans.

10 SECTION 6.16. Subchapter D, Chapter 156, Finance Code, is  
11 amended by adding Section 156.305 to read as follows:

12 Sec. 156.305. RESTITUTION. The commissioner may order a  
13 person to make restitution for any amount received by that person in  
14 violation of this chapter. A mortgage broker may be required to  
15 make restitution for any amount received by a sponsored loan  
16 officer in violation of this chapter.

17 SECTION 6.17. Section 156.406(c), Finance Code, is amended  
18 to read as follows:

19 (c) If the commissioner has reasonable cause to believe that  
20 a person who is not licensed or exempt under this chapter has  
21 engaged, or is about to engage, in an act or practice for which a  
22 license is required under this chapter, the commissioner may issue  
23 without notice and hearing an order to cease and desist from  
24 continuing a particular action or an order to take affirmative  
25 action, or both, to enforce compliance with this chapter. The order  
26 shall contain a reasonably detailed statement of the facts on which  
27 the order is made. The order may assess an administrative penalty

1 in an amount not to exceed \$1,000 per day for each violation and may  
2 require a person to pay to a mortgage applicant any compensation  
3 received by the person from the applicant in violation of this  
4 chapter. If a person against whom the order is made requests a  
5 hearing, the commissioner shall set and give notice of a hearing  
6 before the commissioner or a hearings officer. The hearing shall be  
7 governed by Chapter 2001, Government Code. An order under this  
8 subsection becomes final unless the person to whom the order is  
9 issued requests a hearing not later than the 30th day after the date  
10 the order is issued. [~~Based on the findings of fact, conclusions of~~  
11 ~~law, and recommendations of the hearings officer, the commissioner~~  
12 ~~by order may find a violation has occurred or not occurred.~~]

13 SECTION 6.18. Section 156.501(b), Finance Code, is amended  
14 to read as follows:

15 (b) The fund shall be used to reimburse aggrieved persons to  
16 whom a court awards actual damages because of certain acts  
17 committed by a mortgage broker or loan officer who was licensed  
18 under this chapter when the act was committed. The use of the fund  
19 is limited to an act that constitutes a violation of Section  
20 156.303(a)(2), (3), (5), (6), (8), (9), (10), (11), (12), (13), or  
21 (16) or 156.304. Payments from the fund may not be made to a lender  
22 who makes a mortgage loan originated by the mortgage broker or loan  
23 officer or who acquires a mortgage loan originated by the mortgage  
24 broker or loan officer.

25 ARTICLE 7. MISCELLANEOUS PROVISIONS

26 SECTION 7.01. Section 304.003(c), Finance Code, is amended  
27 to read as follows:

1 (c) The postjudgment interest rate is:

2 (1) the prime rate as published by the Board of  
3 Governors of the Federal Reserve System [~~Federal Reserve Bank of~~  
4 ~~New York~~] on the date of computation;

5 (2) five percent a year if the prime rate as published  
6 by the Board of Governors of the Federal Reserve System [~~Federal~~  
7 ~~Reserve Bank of New York~~] described by Subdivision (1) is less than  
8 five percent; or

9 (3) 15 percent a year if the prime rate as published by  
10 the Board of Governors of the Federal Reserve System [~~Federal~~  
11 ~~Reserve Bank of New York~~] described by Subdivision (1) is more than  
12 15 percent.

13 SECTION 7.02. Not later than December 31, 2006, the Finance  
14 Commission of Texas and the Credit Union Commission shall:

15 (1) compare state laws related to financial  
16 institutions with applicable federal laws;

17 (2) determine which state laws may be preempted by  
18 federal law, rule, or order;

19 (3) determine which state laws may be invalidated by  
20 state or federal court ruling; and

21 (4) report their findings to the legislature, with  
22 recommended statutory changes.

23 SECTION 7.03. Sections 96.052, 345.151, 345.152, and  
24 345.154, Finance Code, and Sections 2153.103, 2153.251, 2153.253,  
25 2153.256, 2153.257, and 2153.258(b), Occupations Code, are  
26 repealed.

1                   ARTICLE 8. EFFECTIVE DATE

2           SECTION 8.01. Except as provided by Section 8.02 of this  
3 article, this Act takes effect September 1, 2005.

4           SECTION 8.02. Sections 2.09, 2.10, and 2.11 of this Act take  
5 effect on the date on which the constitutional amendment proposed  
6 by the 79th Legislature, Regular Session, 2005, authorizing the  
7 legislature to define rates of interest for commercial loans, takes  
8 effect. If that amendment is not approved by the voters, those  
9 sections have no effect.