

By: Solomons

H.B. No. 955

Substitute the following for H.B. No. 955:

By: Solomons

C.S.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, regardless of whether those  
27 expenses or fees are paid to third parties. Those reasonable

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

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

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

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

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

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

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

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

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

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

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

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

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

26 SECTION 2.08. Sections 306.001(2) and (8), Finance Code,  
27 are amended to read as follows:

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

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

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

23           (5-a) "Exempt commercial loan" means a commercial loan  
24 in which one or more persons as part of the same transaction lends,  
25 advances, borrows, or receives, or is obligated to lend or advance  
26 or entitled to borrow or receive, money or credit with an aggregate  
27 value of:



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

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

5                    (9) "Qualified commercial loan":

6                    (A) means:

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

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

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

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

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

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

1 extension; and

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

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

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

13 (c) This chapter does not affect transactions that are not  
14 subject to this chapter or affect or negatively impact any rule of  
15 law applicable to transactions not subject to this chapter.

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

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

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

24 SECTION 2.12. Section 306.005, Finance Code, is amended to  
25 read as follows:

26 Sec. 306.005. PREPAYMENT PREMIUMS AND SIMILAR AMOUNTS  
27 [PENALTY]. With respect to a loan subject to this chapter, a [A]

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

8 SECTION 2.13. Section 306.006, Finance Code, is amended to  
9 read as follows:

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

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

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

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

24 Sec. 306.007. GUARANTY, ASSUMPTION, PAYMENT, OR OTHER  
25 AGREEMENT. With respect to a commercial loan, an obligor may be  
26 required to assume, pay, or provide a guaranty of another person's  
27 existing or future obligation as a condition of the obligor's own

1 use, forbearance, or detention of money. The amount of the other  
2 person's obligation required to be assumed, paid, or guaranteed  
3 does not constitute interest with respect to any obligation of the  
4 obligor.

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

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

11 [~~(1)~~] the rate or amount authorized by Chapter 303[+]  
12 ~~or~~

13 [~~(2) the rate or amount of the applicable market~~  
14 ~~competitive rate ceiling published under Subchapter D].~~

15 SECTION 2.16. Section 346.004, Finance Code, is amended to  
16 read as follows:

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

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

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

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

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

9 (3-a) "Motor home" means a motor vehicle that is  
10 designed to provide temporary living quarters and that:

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

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

18 (i) a cooking facility with an on-board  
19 fuel source;

20 (ii) a gas or electric refrigerator;

21 (iii) a toilet with exterior evacuation;

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

25 (v) a potable water supply system that  
26 includes at least a sink, a faucet, and a water tank with an  
27 exterior service supply connection; or

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

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

7                   (A) a boat trailer;

8                   (B) a vehicle propelled or drawn exclusively by  
9 muscular power;

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

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

15                  (10-a) "Towable recreation vehicle" means a  
16 nonmotorized vehicle that:

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

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

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

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

25 and

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

27                  SECTION 2.19. Section 348.007, Finance Code, is amended by

1 adding Subsection (a-1) to read as follows:

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

8 ARTICLE 3. TEXAS SAVINGS AND MORTGAGE LENDING DEPARTMENT

9 SECTION 3.01. The legislature finds that:

10 (1) the Savings and Loan Department regulates  
11 state-chartered savings and loan institutions, savings banks,  
12 licensed mortgage brokers, and loan officers and registers mortgage  
13 bankers;

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

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

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

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

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

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

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

5        (a) The finance commission shall establish reasonable and  
6 necessary fees for the administration of Subtitles B and C, Title 3,  
7 and Chapters 156 and 157, and for the support of the finance  
8 commission as provided by Subchapter C, Chapter 11. In  
9 establishing the reasonable and necessary fees for the  
10 administration of Chapters 156 and 157, the commissioner and the  
11 finance commission may not exceed the limit on the fees set forth in  
12 those chapters.

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

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

21        SECTION 3.05. The savings and mortgage lending commissioner  
22 shall study the desirability and feasibility of developing  
23 alternative thrift charters, including special purpose charters,  
24 and shall issue a report, including findings and legislative  
25 recommendations, to the legislature not later than December 31,  
26 2006.



ARTICLE 4. CONSUMER CREDIT COMMISSIONER

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

Sec. 14.208. INJUNCTION; APPEAL. (a) If the commissioner has reasonable cause to believe that a person is violating a statute to which this chapter applies, the commissioner, in addition to any other authorized action, may issue an order [the person] to cease and desist [refrain] from the violation or an order to take affirmative action, or both, to enforce compliance. A person may appeal the order to the finance commission as provided by Subsection (d) or directly to district court in accordance with Chapter 2001, Government Code.

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

(c) If a hearing is not timely requested under Subsection (b), the order is considered final and becomes enforceable. The commissioner, after giving notice, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed \$1,000 for each day of violation. In addition to any other remedy provided by law, the commissioner on relation of the attorney general may institute in district court a suit for

1 injunctive relief and to collect an administrative penalty. A bond  
2 is not required of the commissioner with respect to injunctive  
3 relief granted under this section. [~~The commissioner, on relation~~  
4 ~~of the attorney general at the request of the commissioner, may also~~  
5 ~~bring an action in district court to enjoin the person from engaging~~  
6 ~~in or continuing the violation or doing an act that furthers the~~  
7 ~~violation.~~] In the action, the court may enter as proper an order  
8 awarding a preliminary or final injunction.

9 (d) If a party seeks review of the order by the finance  
10 commission, the party shall file a petition for review with the  
11 finance commission not later than the 30th day after the date of the  
12 issuance of the commissioner's decision. The finance commission  
13 may affirm, vacate, or modify an order issued by the commissioner.  
14 A party aggrieved by a final decision of the finance commission is  
15 entitled to judicial review. The party may appeal the decision of  
16 the finance commission by the filing of a motion for rehearing with  
17 the finance commission and then filing a petition initiating  
18 judicial review.

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

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

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

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

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

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

5           SECTION 4.04. Section 14.258, Finance Code, is amended to  
6 read as follows:

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

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

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

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

23           (e) [~~(c)~~] If a person has paid a penalty and a court in a  
24 final judgment reduces or does not uphold the amount, the court  
25 shall order that the appropriate amount plus accrued interest be  
26 remitted to the person. The interest rate is the rate authorized by  
27 Chapter 304, and interest shall be paid for the period beginning on

1 the date the penalty was paid and ending on the date the penalty is  
2 remitted.

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

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

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

10 (2) Chapter 394; or

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

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

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

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

23 Sec. 14.262. EFFECT OF ASSURANCE. (a) An assurance of  
24 voluntary compliance is not an admission of a 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) Unless an assurance of voluntary compliance is  
3 rescinded by agreement or voided by a court for good cause, a  
4 subsequent failure to comply with the assurance is prima facie  
5 evidence of a violation of:

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

7 (2) Chapter 394; or

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

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

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

18 (b) A person entering into an assurance of voluntary  
19 compliance may, not later than the 60th day after the date of filing  
20 of the assurance, correct the violation under Section 349.201.  
21 Amounts paid as restitution and other acts taken in accordance with  
22 an assurance of voluntary compliance shall be considered for  
23 purposes of determining whether the obligor has made a correction  
24 under Section 349.201, 349.202, or 349.203. With respect to  
25 corrections of violations or possible violations relating to  
26 matters addressed in the assurance of voluntary compliance, the  
27 date of filing of the assurance is considered to be the date of:

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

3           (2) written notice; and

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

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

7           (b) The commissioner may assess the administrative penalty  
8 in an amount [+

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

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

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

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

17 (a) An administrative penalty, fine, settlement, or assurance of  
18 voluntary compliance under this title or federal law that is  
19 assessed by or agreed to with an administrative agency or the  
20 attorney general shall be considered and applied as a bar or credit  
21 to recovery of further fines, penalties, or enhanced damages for  
22 substantially the same act, practice, or violation in a suit or  
23 other proceeding brought by a private litigant under this title,  
24 the Business & Commerce Code, or other applicable law of this state.  
25 This section does not apply to a claim for restitution for  
26 unreimbursed actual damages.

27           (b) A suit or other proceeding by a private litigant does

1 not affect or restrict any state or federal agency from pursuing a  
2 person for any administrative remedy, including an administrative  
3 penalty. An administrative agency of this state, however, shall  
4 consider as a mitigating factor any relief recovered in a private  
5 suit or proceeding when the agency determines an administrative  
6 remedy.

7 ARTICLE 5. SAVINGS BANKS AND LIMITED SAVINGS BANKS

8 SECTION 5.01. Section 91.002, Finance Code, is amended by  
9 amending Subdivisions (2) and (18) and adding Subdivision (16-a) to  
10 read as follows:

11 (2) "Board" means the board of directors of a savings  
12 bank or the managers of a savings bank organized as a limited  
13 savings bank.

14 (16-a) "Limited savings bank" means a savings bank  
15 electing to be organized as a limited liability company under this  
16 subtitle.

17 (18) "Member" means:

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

20 (i) [A] holding an account with the  
21 mutual savings bank;

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

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

26 (B) with respect to a savings bank organized as a  
27 limited savings bank, a person who owns a membership interest in the

1 limited savings bank.

2 SECTION 5.02. Section 92.001, Finance Code, is amended to  
3 read as follows:

4 Sec. 92.001. APPLICABILITY OF OTHER LAW. (a) With respect  
5 to a savings bank, other than a savings bank organized as a limited  
6 savings bank, organized before January 1, 2006, the [The] Texas  
7 Business Corporation Act, the Texas Miscellaneous Corporation Laws  
8 Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), and  
9 other law relating to general business corporations apply to a  
10 savings bank to the extent not inconsistent with this subtitle or  
11 the proper business of a savings bank.

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

18 (c) With respect to a savings bank, other than a savings  
19 bank organized as a limited savings bank, organized on or after  
20 January 1, 2006, the provisions of the Business Organizations Code  
21 applicable to general business corporations apply to a savings bank  
22 to the extent not inconsistent with this subtitle or the proper  
23 business of a savings bank.

24 (d) With respect to a savings bank organized as a limited  
25 savings bank on or after January 1, 2006, the provisions of the  
26 Business Organizations Code applicable to a limited liability  
27 company organized in this state apply to a limited savings bank to



1 the extent not inconsistent with this subtitle or the proper  
2 business of a limited savings bank.

3 (e) With respect to a savings bank or limited savings bank  
4 organized before January 1, 2006, the finance commission may  
5 establish rules permitting a savings bank or limited savings bank  
6 to elect to be governed by the provisions of the Business  
7 Organizations Code to the extent not inconsistent with this  
8 subtitle or the proper business of a savings bank or limited savings  
9 bank.

10 SECTION 5.03. Section 92.101, Finance Code, is amended to  
11 read as follows:

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

14 (1) purchasing the assets, assuming the liabilities  
15 other than liability to shareholders, and continuing the business  
16 of a financial institution the commissioner considers to be in an  
17 unsafe condition; ~~or~~

18 (2) acquiring an existing financial institution by  
19 merger; or

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

22 SECTION 5.04. Section 92.102, Finance Code, is amended by  
23 amending Subsection (d) and adding Subsection (e) to read as  
24 follows:

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

27 (1) ~~if~~ the commissioner considers the financial

1 institution to be reorganized or merged to be in an unsafe  
2 condition; or

3 (2) the savings bank incorporated under this  
4 subchapter does not survive the merger or is facilitating the  
5 continuation of an existing savings bank corporate reorganization  
6 as defined by rules adopted by the finance commission.

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

9 (1) Chapter 2001, Government Code, does not apply to  
10 the application; and

11 (2)] the application and all information relating to  
12 the application are confidential and not subject to public  
13 disclosure.

14 SECTION 5.05. Section 92.156, Finance Code, is amended by  
15 amending Subsections (a) and (c) and adding Subsection (e) to read  
16 as follows:

17 (a) A savings bank shall maintain ~~[on file with the~~  
18 ~~commissioner]~~ a blanket indemnity bond with an adequate corporate  
19 surety protecting the savings bank from loss by or through  
20 dishonest or criminal action or omission, including fraud, theft,  
21 robbery, or burglary, by an officer or employee of the savings bank  
22 or a director of the savings bank when the director performs the  
23 duty of an officer or employee.

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

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

27 (2) the sufficiency of the surety.

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

3       SECTION 5.06. Section 92.204, Finance Code, is amended to  
4 read as follows:

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

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

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

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

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

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

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

25       (c) The commissioner may grant temporary or limited  
26 exceptions to the requirements of this section as the commissioner  
27 considers necessary.

1 SECTION 5.07. Section 92.207, Finance Code, is amended to  
2 read as follows:

3 Sec. 92.207. LIMITATION ON ISSUANCE OF SECURITIES. A  
4 savings bank may issue a form of stock, share, account, or  
5 investment certificate only as authorized by this subtitle or as  
6 permitted for a national bank, federal savings and loan  
7 association, federal savings bank, or state bank.

8 SECTION 5.08. Section 92.208, Finance Code, is amended by  
9 amending Subsection (c) and adding Subsection (e) to read as  
10 follows:

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

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

16 SECTION 5.09. Section 92.211, Finance Code, is amended to  
17 read as follows:

18 Sec. 92.211. DIVIDENDS ON CAPITAL STOCK. (a) The board of  
19 a capital stock savings bank may declare and pay a dividend out of  
20 current or retained income, in cash or additional stock, to the  
21 holders of record of the stock outstanding on the date the dividend  
22 is declared.

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

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

27 (2) to have less than zero total retained income on the

1 date of the dividend declaration.

2 SECTION 5.10. Section 92.252(b), Finance Code, is amended  
3 to read as follows:

4 (b) The application to convert must:

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

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

9 SECTION 5.11. Section 92.301(b), Finance Code, is amended  
10 to read as follows:

11 (b) The application to convert must:

12 (1) be submitted to the commissioner and mailed to the  
13 appropriate banking agency not later than the 30th [~~10th~~] day after  
14 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. Sections 92.302(b) and (c), Finance Code, are  
18 amended to read as follows:

19 (b) The directors, or the president and secretary, shall  
20 execute two copies of an application for certificate of  
21 incorporation as provided by Subchapter B.

22 (c) Each director, or the president and secretary, shall  
23 sign and acknowledge the application for certificate of  
24 incorporation as a subscriber and shall sign and acknowledge the  
25 bylaws as an incorporator.

26 SECTION 5.13. Section 92.351(a), Finance Code, is amended  
27 to read as follows:

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

4 SECTION 5.14. Chapter 92, Finance Code, is amended by  
5 adding Subchapter M to read as follows:

6 SUBCHAPTER M. LIMITED SAVINGS BANK

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

10 (1) an application to organize a limited savings bank  
11 that is:

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

13 (B) signed by each organizer; and

14 (2) the filing fee.

15 (b) An application must contain:

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

18 (A) the name of the savings bank;

19 (B) the location of the principal office;

20 (C) the names and addresses of the initial  
21 managers; and

22 (D) to the extent not inconsistent with this  
23 subtitle, the proper business of a savings bank, or a rule adopted  
24 by the finance commission related to savings banks, other  
25 provisions included in:

26 (i) the articles of organization of a  
27 limited liability company organized under the Texas Limited

1 Liability Company Act (Article 1528n, Vernon's Texas Civil  
2 Statutes) if the limited savings bank was organized before January  
3 1, 2006; or

4 (ii) the certificate of formation of a  
5 limited liability company organized under Chapter 101, Business  
6 Organizations Code, if:

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

9 (b) the organizers elect to include  
10 those provisions, if the limited savings bank was organized before  
11 January 1, 2006;

12 (2) two copies of the savings bank's company  
13 agreement;

14 (3) data sufficiently detailed and comprehensive in  
15 nature to enable the commissioner to make findings under Section  
16 92.058, including statements, exhibits, and maps;

17 (4) financial information about each applicant,  
18 organizer, manager, officer, or member that the finance commission  
19 requires by rule; and

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

22 (c) Financial information described by Subsection (b) is  
23 confidential and not subject to public disclosure unless the  
24 commissioner finds that disclosure is necessary and in the public  
25 interest.

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

27 (e) Subchapter B, Chapter 92, applies to the organization of

1 a limited savings bank except to the extent inconsistent with this  
2 section.

3 Sec. 92.602. LIABILITY OF MEMBERS AND MANAGERS. A member,  
4 transferee of a member, or manager of a limited savings bank is not  
5 liable for a debt, obligation, or liability of the limited savings  
6 bank, including a debt, obligation, or liability under a judgment,  
7 decree, or order of a court. A member or a manager of a limited  
8 savings bank is not a proper party to a proceeding by or against a  
9 limited savings bank unless the object of the proceeding is to  
10 enforce a member's or manager's right against or liability to a  
11 limited savings bank.

12 Sec. 92.603. CONTRIBUTIONS. A member of a limited savings  
13 bank is obligated to make contributions as required in the company  
14 agreement.

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

19 (b) A manager must meet the qualifications for a director  
20 under Section 92.153.

21 (c) The governing documents of a limited savings bank may  
22 use "director" instead of "manager" and "board" instead of "board  
23 of managers."

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



1 reduction.

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

7 Sec. 92.606. COMPANY AGREEMENT OF LIMITED SAVINGS BANK.

8 (a) A limited savings bank shall adopt a company agreement that  
9 contains provisions regulating the management and organization of  
10 the limited savings bank. The agreement is subject to the approval  
11 of the commissioner and must contain provisions the finance  
12 commission may require by a rule adopted under this subchapter.

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

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

17 (1) the expiration of the period fixed for the  
18 duration of the limited savings bank; or

19 (2) the occurrence of events specified in the  
20 certificate of formation or company agreement to cause dissolution.

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

23 Sec. 92.608. ALLOCATION OF PROFITS AND LOSSES. The profits  
24 and losses of a limited savings bank may be allocated among the  
25 members and among classes of members as provided by the company  
26 agreement. Without the prior written approval of the commissioner  
27 to use a different allocation method, the profits and losses must be

1 allocated according to the relative interests of the members in the  
2 limited savings bank.

3 Sec. 92.609. DISTRIBUTIONS. Subject to rules adopted by  
4 the finance commission, distributions of cash or other assets of a  
5 limited savings bank may be made to the members as provided by the  
6 company agreement. Without the prior written approval of the  
7 commissioner to use a different distribution method, distributions  
8 must be made to the members according to the relative interests of  
9 the members as reflected in the governing documents of the limited  
10 savings bank filed with and approved by the commissioner.

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

16 (b) If provided in the governing documents, the company  
17 agreement of a limited savings bank may be amended by a majority  
18 vote of the board of managers unless the governing documents  
19 require a higher percentage. In the absence of an express provision  
20 in the governing documents, the company agreement may be amended by  
21 a majority vote of the members cast at any annual meeting or special  
22 meeting called for that purpose.

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

25 Sec. 92.611. APPLICATION OF OTHER PROVISIONS TO LIMITED  
26 SAVINGS BANKS; MISCELLANEOUS PROVISIONS. (a) This subtitle  
27 applies to a savings bank organized as a limited savings bank under

1 this subchapter. In the event of a conflict between this subchapter  
2 and a provision of this subtitle, this subchapter controls unless  
3 the finance commission by rule provides that this subtitle  
4 controls.

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

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

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

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

11 (c) A reference in a statute or rule to a savings bank  
12 includes a savings bank organized as a limited savings bank unless  
13 the context clearly requires that a limited savings bank is not  
14 included within the term or the provision contains express language  
15 excluding a limited savings bank.

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

19 SECTION 5.15. Section 93.001(c), Finance Code, is amended  
20 to read as follows:

21 (c) A savings bank may:

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

23 (2) adopt and operate a reasonable bonus plan,  
24 profit-sharing plan, stock bonus plan, stock option plan, pension  
25 plan, or similar incentive plan for its directors, officers, or  
26 employees, subject to any limitations under this subtitle or rules  
27 adopted under this subtitle;

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

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

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

11           (6) become a member of or deal with any corporation or  
12 agency of the United States or this state, to the extent that the  
13 corporation or agency assists in furthering the purposes or powers  
14 of savings banks, and for that purpose may purchase stock or  
15 securities of the corporation or agency or deposit money with the  
16 corporation or agency and may comply with any other condition of  
17 membership credit;

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

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

23           (9) receive and repay any deposit or account in  
24 accordance with this subtitle and rules of the finance commission;  
25 and

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

1 SECTION 5.16. Section 93.008, Finance Code, is amended to  
2 read as follows:

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

7 (1) under state law for a bank or savings and loan  
8 association; or

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

12 (b) Notwithstanding any other law, a savings bank organized  
13 and chartered under this chapter may perform an act, own property,  
14 or offer a product or service that is at the time permissible within  
15 the United States for a depository institution organized under  
16 federal law or the law of this state or another state if the  
17 commissioner approves the exercise of the power as provided by this  
18 section, subject to the same limitations and restrictions  
19 applicable to the other depository institution by pertinent law,  
20 except to the extent the limitations and restrictions are modified  
21 by rules adopted under Subsection (e). This section may not be used  
22 to alter or negate the application of the laws of this state with  
23 respect to:

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

26 (2) permissible interest rates and loan fees  
27 chargeable in this state;

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

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

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

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

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

19           (2) if the savings bank is insured by the Federal  
20 Deposit Insurance Corporation, the savings bank is prohibited from  
21 exercising the power under Section 24, Federal Deposit Insurance  
22 Act (12 U.S.C. Section 1831a), and related regulations;

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

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

27           (d) A savings bank that is denied the requested power by the

1 commissioner under this section may appeal. The notice of appeal  
2 must be in writing and must be received by the commissioner not  
3 later than the 30th day after the date of the denial. An appeal  
4 under this section is a contested case under Chapter 2001,  
5 Government Code.

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

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

14 SECTION 5.17. Section 94.201, Finance Code, is amended to  
15 read as follows:

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

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

23 (2) home improvement loans;

24 (3) interim residential construction loans;

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

27 (5) loans for community reinvestment; and

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

4           SECTION 5.18. Section 96.053(a), Finance Code, is amended  
5 to read as follows:

6           (a) Before March [~~February~~] 1 of each year, a savings bank  
7 shall provide to the commissioner on a form to be prescribed and  
8 furnished by the commissioner a written report of its affairs and  
9 operations, including a complete statement of its financial  
10 condition with a statement of income and expenses since its last  
11 annual report under this section. The report must be signed by the  
12 president, vice president, or secretary of the savings bank.

13           SECTION 5.19. Sections 97.001-97.007, Finance Code, are  
14 designated as Subchapter A, Chapter 97, Finance Code, and a  
15 subchapter heading is added to read as follows:

16           SUBCHAPTER A. GENERAL PROVISIONS APPLICABLE TO HOLDING COMPANIES

17           SECTION 5.20. Chapter 97, Finance Code, is amended by  
18 adding Subchapter B to read as follows:

19                   SUBCHAPTER B. MUTUAL HOLDING COMPANIES

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

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



1       Sec. 97.052. APPLICATION FOR APPROVAL OF REORGANIZATION.

2       The application for approval of reorganization must contain:

3               (1) a brief statement summarizing a reorganization  
4       plan;

5               (2) two copies of the proposed articles of  
6       incorporation of the subsidiary savings bank acknowledged by the  
7       incorporators of the subsidiary savings bank;

8               (3) two copies of the proposed bylaws of the savings  
9       bank;

10              (4) a statement that the plan of reorganization was  
11       advised, authorized, and approved by the savings bank in the manner  
12       and by the vote required by its charter and the laws of this state;  
13       and

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

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

17              (1) a subsidiary savings bank shall:

18                      (A) be incorporated under Subchapter B, Chapter  
19       92; or

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

22              (2) the savings bank shall transfer a substantial part  
23       of its assets to the subsidiary savings bank, and the subsidiary  
24       savings bank shall assume a substantial part of the savings bank's  
25       liabilities, including all depository liabilities;

26              (3) as a result of the reorganization, the mutual  
27       holding company must hold more than 50 percent of the stock of the

1 subsidiary savings bank; and

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

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

9 (1) all required charter amendments; and

10 (2) a description of the corporate management of the  
11 reorganized mutual holding company.

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

14 ARTICLE 6. AMENDMENTS TO MORTGAGE BROKER LICENSE ACT

15 SECTION 6.01. Section 156.005, Finance Code, is amended to  
16 read as follows:

17 Sec. 156.005. AFFILIATED BUSINESS ARRANGEMENTS. Unless  
18 prohibited by federal or state law, this chapter may not be  
19 construed to prevent affiliated or controlled business  
20 arrangements or loan origination services by or between mortgage  
21 brokers and other professionals if the mortgage broker complies  
22 with all applicable federal and state laws permitting those  
23 arrangements or services.

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

26 (d) The finance commission shall consult with the  
27 commissioner [~~mortgage broker advisory committee~~] when proposing

1 and adopting rules under this chapter.

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

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

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

9 (A) the licensing of mortgage brokers and loan  
10 officers;

11 (B) the education and experience requirements  
12 for licensing mortgage brokers and loan officers;

13 (C) conduct and ethics of mortgage brokers and  
14 loan officers;

15 (D) continuing education for licensed mortgage  
16 brokers and loan officers and the types of courses acceptable as  
17 continuing education courses under this chapter; and

18 (E) the granting or denying of an application or  
19 request for renewal for a mortgage broker license or loan officer  
20 license;

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

23 (3) the interpretation, implementation, and  
24 enforcement of this chapter.

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

1           (1) the result of the vote; and  
2           (2) any additional information the commissioner  
3 considers necessary to ensure the finance commission is  
4 sufficiently notified of the advisory committee's recommendations.

5           (k) A record vote taken by the advisory committee under  
6 Subsection (j) is only a recommendation and does not supersede the  
7 rulemaking authority of the finance commission under this  
8 subchapter.

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

11           (c) Each mortgage broker licensed under this chapter is  
12 responsible to the commissioner and members of the public for any  
13 act or conduct performed [~~under this chapter~~] by the mortgage  
14 broker or a loan officer sponsored by or acting for the mortgage  
15 broker in connection with:

16           (1) the origination of a mortgage loan; or  
17           (2) a transaction that is related to the origination  
18 of a mortgage loan in which the mortgage broker knew or should have  
19 known of the transaction.

20           SECTION 6.05. Section 156.202, Finance Code, is amended to  
21 read as follows:

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

23           (1) any of the following entities or an employee of any  
24 of the following entities provided the employee is acting for the  
25 benefit of the employer:

26           (A) a bank, savings bank, or savings and loan  
27 association, or a subsidiary or an affiliate of a bank, savings

1 bank, or savings and loan association;

2 (B) a state or federal credit union, or a  
3 subsidiary, affiliate, or credit union service organization of a  
4 state or federal credit union;

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

7 (D) a mortgage banker registered under Chapter  
8 157;

9 (E) an organization that qualifies for an  
10 exemption from state franchise and sales tax as a 501(c)(3)  
11 organization;

12 (F) a Farm Credit System institution; or

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

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

18 (3) an owner of real property who makes a mortgage loan  
19 to a purchaser of the property for all or part of the purchase price  
20 of the real estate against which the mortgage is secured; or

21 (4) an individual who:

22 (A) makes a mortgage loan from the individual's  
23 own funds;

24 (B) is not an authorized lender under Chapter  
25 342, Finance Code; and

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

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

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

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

10 (a) To be eligible to be licensed as a mortgage broker a  
11 person must:

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

13 (2) be a citizen of the United States or a lawfully  
14 admitted alien;

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

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

19 (A) the person has received a bachelor's degree  
20 in an area relating to finance, banking, or business administration  
21 from an accredited college or university and has 18 months of  
22 experience in the mortgage or lending field as evidenced by  
23 documentary proof of full-time employment as a mortgage broker or  
24 loan officer with a mortgage broker or a person exempt under Section  
25 156.202;

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

27 (i) an active real estate broker under

1 Chapter 1101, Occupations Code;

2 (ii) an active attorney; or

3 (iii) a local recording agent or insurance  
4 solicitor or agent for a legal reserve life insurance company under  
5 Chapter 21, Insurance Code, or holds an equivalent license under  
6 Chapter 21, Insurance Code; or

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

11 (5) provide the commissioner with satisfactory  
12 evidence of:

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

16 (i) the mortgage industry; and

17 (ii) the role and responsibilities of a  
18 mortgage broker; and

19 (B) compliance with the financial requirements  
20 of this chapter; ~~and~~

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

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

27 (8) not be in violation of this chapter, a rule adopted

1 under this chapter, or any order previously issued to the  
2 individual by the commissioner.

3 (c) To be eligible to be licensed as a loan officer a person  
4 must:

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

6 (2) be a citizen of the United States or a lawfully  
7 admitted alien;

8 (3) designate in the application the name of the  
9 mortgage broker sponsoring the loan officer;

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

12 (A) the person meets one of the requirements  
13 described by Subsection (a)(4);

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

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

21 (D) for applications received prior to January 1,  
22 2000, the mortgage broker that will sponsor the applicant provides  
23 a certification under oath that the applicant has been provided  
24 necessary and appropriate education and training regarding all  
25 applicable state and federal law and regulations relating to  
26 mortgage loans;

27 (5) not have been convicted of a criminal offense that



1 the commissioner determines directly relates to the occupation of a  
2 loan officer as provided by Chapter 53, Occupations Code;

3 (6) satisfy the commissioner as to the individual's  
4 good moral character, including the individual's honesty,  
5 trustworthiness, and integrity; ~~and~~

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

10 (A) the mortgage industry; and

11 (B) the role and responsibilities of a loan  
12 officer; and~~[-]~~

13 (8) ~~(7)~~ not be in violation of this chapter, a rule  
14 adopted under this chapter, or any order previously issued to the  
15 individual by the commissioner.

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

18 (a) In this section, "net assets" means the difference  
19 between total assets and total liabilities, as determined by  
20 generally acceptable accounting principles, and does not include  
21 any assets that are exempt under state or federal law. All assets  
22 and liabilities are subject to verification by the commissioner.

23 (b) A mortgage broker must maintain net assets of at least  
24 \$25,000 or a surety bond in the amount of at least \$50,000. The term  
25 of the surety bond must coincide with the term of the license. The  
26 finance commission may adopt rules establishing the terms and  
27 conditions of the surety bond and the qualifications of the surety.

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

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

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

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

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

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

17 (c) A person whose license has been expired for 91 days or  
18 more may not renew the license. The person may obtain a new license  
19 by complying with the requirements and procedures for obtaining an  
20 original license. ~~[more than 90 days but less than one year but who~~  
21 ~~is otherwise eligible to renew a license may renew the license by~~  
22 ~~paying to the commissioner a renewal fee that is equal to two times~~  
23 ~~the normally required renewal fee.~~

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

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

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

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

15        (c) The designated hearings officer shall set the time and  
16 place for a hearing requested under Subsection (b) not later than  
17 the 90th [~~30th~~] day after the date on which the appeal is received.  
18 The hearings officer shall provide at least 10 days' notice of the  
19 hearing to the applicant or person requesting the renewal. The time  
20 of the hearing may be continued periodically with the consent of the  
21 applicant or person requesting the renewal. After the hearing, the  
22 commissioner shall enter an order from the findings of fact,  
23 conclusions of law, and recommendations of the hearings officer.

24        (f) A person who requests a hearing under this section shall  
25 be required to pay a deposit to secure the payment of the costs of  
26 the hearing in an amount to be determined by the commissioner not to  
27 exceed \$500. The entire deposit shall be refunded to the person if

1 the person prevails in the contested case hearing. If the person  
2 does not prevail, any portion of the deposit in excess of the costs  
3 of the hearing assessed against that person shall be refundable.

4 (g) A person whose application for a license has been denied  
5 is not eligible to be licensed for a period of two years after the  
6 date the denial becomes final, or a shorter period determined by the  
7 commissioner after evaluating the specific circumstances of the  
8 person's subsequent application. The finance commission may adopt  
9 rules to provide conditions for which the commissioner may shorten  
10 the time of disqualification.

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

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

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

18 (g) The commissioner may share information gathered during  
19 an investigation or inspection with any state or federal agency.

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

22 Sec. 156.3011. ISSUANCE AND ENFORCEMENT OF SUBPOENA. (a)  
23 During an investigation, the commissioner may issue a subpoena that  
24 is addressed to a peace officer of this state or other person  
25 authorized by law to serve citation or perfect service. The  
26 subpoena may require a person to give a deposition, produce  
27 documents, or both.

1        (b) If a person disobeys a subpoena or if a person appearing  
2 in a deposition in connection with the investigation refuses to  
3 testify, the commissioner may petition a district court in Travis  
4 County to issue an order requiring the person to obey the subpoena,  
5 testify, or produce documents relating to the matter. The court  
6 shall promptly set an application to enforce a subpoena issued  
7 under Subsection (a) for hearing and shall cause notice of the  
8 application and the hearing to be served upon the person to whom the  
9 subpoena is directed.

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

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

16            (1) obtained a license, including a renewal of a  
17 license, under this chapter through a false or fraudulent  
18 representation or made a material misrepresentation in an  
19 application for a license or for the renewal of a license under this  
20 chapter;

21            (2) published or caused to be published an  
22 advertisement related to the business of a mortgage broker or loan  
23 officer that:

- 24                    (A) is misleading;
- 25                    (B) is likely to deceive the public;
- 26                    (C) in any manner tends to create a misleading  
27 impression;

1 (D) fails to identify as a mortgage broker or  
2 loan officer the person causing the advertisement to be published;  
3 or

4 (E) violates federal or state law;

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

8 (4) entered a plea of guilty or nolo contendere to, or  
9 is convicted of, a criminal offense that is a felony or that  
10 involves fraud or moral turpitude in a court of this or another  
11 state or in a federal court [~~failed to notify the commissioner not~~  
12 ~~later than the 30th day after the date of the final conviction if~~  
13 ~~the person, in a court of this or another state or in a federal~~  
14 ~~court, has been convicted of or entered a plea of guilty or nolo~~  
15 ~~contendere to a felony or a criminal offense involving fraud~~];

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

18 (6) charged or received, directly or indirectly, a fee  
19 for assisting a mortgage applicant in obtaining a mortgage loan  
20 before all of the services that the person agreed to perform for the  
21 mortgage applicant are completed, and the proceeds of the mortgage  
22 loan have been disbursed to or on behalf of the mortgage applicant,  
23 except as provided by Section 156.304;

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

1           (8) paid compensation to a person who is not licensed  
2 or exempt under this chapter for acts for which a license under this  
3 chapter is required;

4           (9) induced or attempted to induce a party to a  
5 contract to breach the contract so the person may make a mortgage  
6 loan;

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

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

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

17           (13) acted in the dual capacity of a mortgage broker or  
18 loan officer and real estate broker, salesperson, or attorney in a  
19 transaction without the knowledge and written consent of the  
20 mortgage applicant or in violation of applicable requirements under  
21 federal law;

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

25           (15) failed or refused on demand to:

26                   (A) produce a document, book, or record  
27 concerning a mortgage loan transaction conducted by the mortgage

1 broker or loan officer for inspection by the commissioner or the  
2 commissioner's authorized personnel or representative;

3 (B) give the commissioner or the commissioner's  
4 authorized personnel or representative free access to the books or  
5 records relating to the person's business kept by an officer,  
6 agent, or employee of the person or any business entity through  
7 which the person conducts mortgage brokerage activities, including  
8 a subsidiary or holding company affiliate; or

9 (C) provide information requested by the  
10 commissioner as a result of a formal or informal complaint made to  
11 the commissioner;

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

17 (17) disregarded or violated this chapter, a rule  
18 adopted by the finance commission under this chapter, or an order  
19 issued by the commissioner under this chapter.

20 (f) For purposes of Subsection (a), a person is considered  
21 convicted if a sentence is imposed on the person, the person  
22 receives community supervision, including deferred adjudication  
23 community supervision, or the court defers final disposition of the  
24 person's case.

25 (g) If a person fails to pay an administrative penalty that  
26 has become final or fails to comply with an order of the  
27 commissioner that has become final, in addition to any other remedy



1 provided under law the commissioner, on not less than 10 days'  
2 notice to the person, may without a prior hearing suspend the  
3 person's mortgage broker license or loan officer license. The  
4 suspension shall continue until the person has complied with the  
5 cease and desist order or paid the administrative penalty. During  
6 the period of suspension, the person may not originate a mortgage  
7 loan and all compensation received by the person during the period  
8 of suspension is subject to forfeiture as provided by Section  
9 156.406(b).

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

17 (i) An order revoking the license of a mortgage broker or  
18 loan officer may provide that the person is prohibited, without  
19 obtaining prior written consent of the commissioner, from:

20 (1) engaging in the business of originating or making  
21 mortgage loans;

22 (2) being an employee, officer, director, manager,  
23 shareholder, member, agent, contractor, or processor of a mortgage  
24 broker or loan officer; or

25 (3) otherwise affiliating with a person for the  
26 purpose of engaging in the business of originating or making  
27 mortgage loans.

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

3 Sec. 156.305. RESTITUTION. The commissioner may order a  
4 person to make restitution for any amount received by that person in  
5 violation of this chapter. A mortgage broker may be required to  
6 make restitution for any amount received by a sponsored loan  
7 officer in violation of this chapter.

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

10 (c) If the commissioner has reasonable cause to believe that  
11 a person who is not licensed or exempt under this chapter has  
12 engaged, or is about to engage, in an act or practice for which a  
13 license is required under this chapter, the commissioner may issue  
14 without notice and hearing an order to cease and desist from  
15 continuing a particular action or an order to take affirmative  
16 action, or both, to enforce compliance with this chapter. The order  
17 shall contain a reasonably detailed statement of the facts on which  
18 the order is made. The order may assess an administrative penalty  
19 in an amount not to exceed \$1,000 per day for each violation and may  
20 require a person to pay to a mortgage applicant any compensation  
21 received by the person from the applicant in violation of this  
22 chapter. If a person against whom the order is made requests a  
23 hearing, the commissioner shall set and give notice of a hearing  
24 before the commissioner or a hearings officer. The hearing shall be  
25 governed by Chapter 2001, Government Code. An order under this  
26 subsection becomes final unless the person to whom the order is  
27 issued requests a hearing not later than the 30th day after the date

1 the order is issued. [~~Based on the findings of fact, conclusions of~~  
2 ~~law, and recommendations of the hearings officer, the commissioner~~  
3 ~~by order may find a violation has occurred or not occurred.~~]

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

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

16 ARTICLE 7. MISCELLANEOUS PROVISIONS

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

19 (c) The postjudgment interest rate is:

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

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

27 (3) 15 percent a year if the prime rate as published by

1 the Board of Governors of the Federal Reserve System [~~Federal~~  
2 ~~Reserve Bank of New York~~] described by Subdivision (1) is more than  
3 15 percent.

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

6 (1) compare state laws related to financial  
7 institutions with applicable federal laws;

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

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

12 (4) report their findings to the legislature, with  
13 recommended statutory changes.

14 SECTION 7.03. Sections 96.052, 345.151, 345.152, and  
15 345.154, Finance Code, and Sections 2153.103, 2153.251, 2153.253,  
16 2153.256, 2153.257, and 2153.258(b), Occupations Code, are  
17 repealed.

18 ARTICLE 8. EFFECTIVE DATE

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

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