

By: Solomons

H.B. No. 955

A BILL TO BE ENTITLED

AN ACT

relating to interest rates, usury, consumer protections, commercial and consumer lending, licensing of mortgage brokers, savings bank charters, and the regulation of lenders; providing civil and criminal penalties.

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

ARTICLE 1. CONSUMER PROTECTION

SECTION 1.01. Title 1, Finance Code, is amended by adding new Chapter 10 to read as follows:

CHAPTER 10. UNFAIR OR DECEPTIVE ACTS OR PRACTICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 10.001. PURPOSE. The purpose of this chapter is to protect consumers in their relationships with persons engaged in a financial services business by:

(1) defining trade practices in this state which are unfair methods of competition or unfair or deceptive acts or practices;

(2) providing for the determination of whether a trade practice is an unfair method of competition or an unfair or deceptive act or practice;

(3) prohibiting those trade practices; and

(4) requiring relevant public officials to enforce this chapter.

Sec. 10.002. DEFINITIONS. In this chapter:

1           (1) "Financial service" means any service subject to  
2 this code.

3           (2) "Financial services business" means the provision  
4 of any financial service.

5           (3) "Financial services provider" means a person  
6 engaged in the financial services business.

7           (4) "Intentionally" means actual awareness of the  
8 falsity, deception, or unfairness of the act or practice on which a  
9 claim for damages is based, coupled with the specific intent that  
10 the consumer act in detrimental reliance on the falsity or  
11 deception or in detrimental ignorance of the unfairness. Intention  
12 may be inferred from objective manifestations that indicate that  
13 the person acted intentionally or from facts showing that a  
14 defendant acted with flagrant disregard of prudent and fair  
15 business practices to the extent that the defendant should be  
16 treated as having acted intentionally.

17           (5) "Knowingly" means actual awareness of the falsity,  
18 unfairness, or deceptiveness of the act or practice on which a claim  
19 for damages is based. Actual awareness may be inferred if objective  
20 manifestations indicate that a person acted with actual awareness.

21           (6) "Pattern of unconscionable actions" means  
22 repeated unconscionable actions or courses of action, as defined by  
23 this chapter, that:

24           (A) is intentionally committed by a person  
25 engaged in the financial services business with the specific intent  
26 that the consumer act in detrimental reliance on the falsity or  
27 deception or in detrimental ignorance of the unfairness;

1           (B) that causes damages to consumers; and

2           (C) which represents a significant portion of  
3 financial services conducted by the person.

4           (7) "Person" means an individual, corporation,  
5 association, partnership, trust, or other legal entity engaged in  
6 the financial services business, including a mortgage broker,  
7 pawnshop employee, credit counselor, or other holder of a license  
8 issued by an agency governed by Title 2 of this code, or by a person  
9 required to register with an agency governed by Title 2 of this  
10 code.

11           (8) "Supervisory public official" means

12           (A) a public official who has authority by law to  
13 examine the financial service provider's condition or affairs; or

14           (B) the attorney general.

15           (9) "Unconscionable action or course of action" means  
16 an act or practice which, to a consumer's detriment, takes  
17 advantage of the lack of knowledge, ability, experience, or  
18 capacity of the consumer to a grossly unfair degree.

19           Sec. 10.003. UNFAIR METHODS OF COMPETITION AND UNFAIR OR  
20 DECEPTIVE ACTS OR PRACTICES PROHIBITED. A person may not engage in  
21 this state in a trade practice defined by this chapter as, or  
22 determined under this chapter to be, an unfair method of  
23 competition or an unfair or deceptive act or practice in the  
24 financial service business.

25           SUBCHAPTER B. UNFAIR METHODS OF COMPETITION AND UNFAIR OR  
26           DECEPTIVE ACTS OR PRACTICES DEFINED.

27           Sec. 10.101. MISREPRESENTATION. (a) It is an unfair method

1 of competition or an unfair or deceptive act or practice in the  
2 financial services business to:

3 (1) make, issue, circulate, or cause to be made,  
4 issued, or circulated an estimate, illustration, circular, or  
5 statement misrepresenting with respect to a financial service:

6 (A) the terms of the financial service;

7 (B) the benefits or advantages promised by the  
8 financial service; or

9 (C) the costs to be assessed in connection with  
10 the financial service;

11 (2) make a false or misleading statement, either  
12 written or verbal, regarding the costs previously paid on a similar  
13 financial service;

14 (3) make a misleading representation or  
15 misrepresentation regarding the financial condition of a financial  
16 services provider;

17 (4) use a name or title of a financial service that  
18 misrepresents the true nature of the financial service;

19 (5) fail to state a material fact necessary to make  
20 other statements not misleading, considering the circumstances  
21 under which the statements were made;

22 (6) fail to disclose a matter required by law to be  
23 disclosed, including failure to make a disclosure in accordance  
24 with another provision of this code; or

25 (7) make a misrepresentation to a debtor for the  
26 purpose of inducing or that tends to induce the debtor to renew or  
27 refinance an existing extension of credit.

1       (b) It is an unfair method of competition or an unfair or  
2 deceptive act or practice in the financial services business to  
3 misrepresent a financial service by:

4           (1) making an untrue statement of material fact;

5           (2) failing to state a material fact necessary to make  
6 other statements made not misleading, considering the  
7 circumstances under which the statements were made;

8           (3) making a statement in a manner that would mislead a  
9 reasonably prudent person to a false conclusion of a material fact;

10          (4) making statements or representations of material  
11 facts, terms, or conditions regarding a financial service to a  
12 potential account-holder, borrower, or customer which are not  
13 intended by the person engaged in the financial services business  
14 to be the actual material facts, terms, or conditions of the  
15 financial service ultimately offered to the potential  
16 account-holder, borrower, or customer;

17          (5) making a material misstatement of law or  
18 regulation; or

19          (6) failing to disclose a matter required by law to be  
20 disclosed, including failing to make a disclosure in accordance  
21 with another provision of this code.

22       Sec. 10.102. FALSE INFORMATION AND ADVERTISING. (a) It is  
23 an unfair method of competition or an unfair or deceptive act or  
24 practice in the financial services business to make, publish,  
25 disseminate, circulate, deliver to any person, or place before the  
26 public, or directly or indirectly cause to be made, published,  
27 disseminated, circulated, delivered to any person, or placed before

1 the public an advertisement, announcement, or statement containing  
2 an untrue, deceptive, or misleading assertion, representation, or  
3 statement regarding:

4 (1) the financial services business;

5 (2) a person conducting the financial services  
6 business; or

7 (3) the benefits or advantages promised by the  
8 financial service.

9 (b) This section applies to an advertisement, announcement,  
10 or statement made, published, disseminated, circulated, or placed  
11 before the public:

12 (1) in a newspaper, magazine, or other publication;

13 (2) in a notice, circular, pamphlet, or letter;

14 (3) on a billboard or other form of outdoor promotion  
15 or advertising;

16 (4) on a poster, placard, or other form of indoor  
17 promotion or advertising;

18 (5) over a radio or television station;

19 (6) on an Internet webpage;

20 (7) over the telephone; or

21 (8) in any other manner determined by a supervisory  
22 public official to be an advertisement, announcement, or statement  
23 made, published, disseminated, circulated, or placed before the  
24 public.

25 Sec. 10.103. FALSE FINANCIAL STATEMENT. (a) It is an  
26 unfair method of competition or an unfair or deceptive act or  
27 practice in the financial services business to, with intent to

1 deceive:

2 (1) file with a supervisory public official or other  
3 public official a false statement of financial condition of a  
4 financial services provider; or

5 (2) make, publish, disseminate, circulate, deliver to  
6 any person, or place before the public or directly or indirectly  
7 cause to be made, published, disseminated, circulated, delivered to  
8 any person, or placed before the public a false statement of  
9 financial condition of a financial services provider.

10 (b) It is an unfair method of competition or an unfair or  
11 deceptive act or practice in the financial services business to  
12 make a false entry in a financial service provider's book, report,  
13 or statement or willfully omit to make a true entry of a material  
14 fact relating to the financial service provider's business in the  
15 financial service provider's book, report, or statement with the  
16 intent to deceive:

17 (1) an agent or examiner lawfully appointed to examine  
18 the financial service provider's condition or affairs; or

19 (2) a public official to whom the financial service  
20 provider is required by law to report or who has the authority by  
21 law to examine the financial service provider's conditions or  
22 affairs.

23 Sec. 10.104. ATTEMPT TO EVADE LAW. It is an unfair method  
24 of competition or an unfair or deceptive act or practice in the  
25 financial services business to knowingly evade the application of  
26 this code or a rule adopted under this code by use of any device,  
27 subterfuge, or pretense.

1       SUBCHAPTER C. DETERMINATION OF UNFAIR METHODS OF COMPETITION

2               OR UNFAIR OR DECEPTIVE ACTS OR PRACTICES.

3               Sec. 10.201. EXAMINATION AND INVESTIGATION. (a) A  
4 supervisory public official may examine and investigate the affairs  
5 of a person engaged in the financial services business in this state  
6 to determine whether the person has engaged in an unfair method of  
7 competition or unfair or deceptive act or practice.

8               (b) The finance commission or the credit union department,  
9 following an examination and investigation under this section, may  
10 issue an order, adopt rules, or initiate a proceeding to define  
11 particular acts or practices not otherwise included in Subchapter B  
12 as an unfair method of competition or unfair or deceptive act or  
13 practice.

14              Sec. 10.202. ENFORCEMENT. When a supervisory public  
15 official has reason to believe that a person engaged in the  
16 financial services business in this state has engaged or is  
17 engaging in this state in an unfair method of competition or unfair  
18 or deceptive act or practice defined by Subchapter B and that a  
19 proceeding by the supervisory public official's agency is in the  
20 interest of the public, the agency shall proceed under the  
21 enforcement authority available to the agency under this code.

22              SUBCHAPTER D. ADDITIONAL PENALTIES FOR PATTERNS OF

23                              UNCONSCIONABLE ACTIONS

24              Sec. 10.301. CIVIL PENALTIES. (a) In addition to any  
25 penalty or remedy available under the laws of this state or federal  
26 law, a person who commits a pattern of unconscionable actions  
27 defined by this chapter is liable to the state for a civil penalty



1 of \$25,000.

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

3 Sec. 10.305. CRIMINAL PENALTIES. Nothing in this chapter  
4 precludes, diminishes, or limits the applicability of the Texas  
5 Penal Code or other laws that establish penal sanctions for acts or  
6 practices that are also covered by this chapter.

7 Sec. 10.311. EFFECT ON LICENSURE. (a) A person who has  
8 been convicted of engaging in a pattern of unconscionable actions  
9 may not obtain or renew a license issued by:

10 (1) the Texas Department of Banking;

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

12 (3) the Consumer Credit Commissioner;

13 (4) the Credit Union Department;

14 (5) the Texas Real Estate Commission;

15 (6) the State Bar of Texas; or

16 (7) the Texas Department of Insurance

17 (b) Notwithstanding any other law, the agencies described  
18 by Subsection (a) shall revoke the licenses issued to a person who  
19 has been convicted of engaging in a pattern of unconscionable  
20 actions.

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

26 ARTICLE 2. USURY REFORM

27 SECTION 2.01. Section 303.009, Finance Code, is amended to

1 read as follows:

2           Sec. 303.009. MAXIMUM AND MINIMUM WEEKLY, MONTHLY,  
3 QUARTERLY, OR ANNUALIZED CEILING. (a) [~~Except as provided by~~  
4 ~~Subsection (e), if~~] If the rate computed for the weekly, monthly,  
5 quarterly, or annualized ceiling is less than 18 percent a year, the  
6 ceiling is 18 percent a year.

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

11           (c) For a contract made, extended, or renewed under which  
12 credit is extended for a business, commercial, investment, or  
13 similar purpose, [~~and the amount of the credit extension is~~  
14 ~~\$250,000 or more, the 24 percent limitation on the ceilings in~~  
15 ~~Subsection (b) does not apply, and the limitation on~~] the ceilings  
16 are [~~determined by those computations is~~] 28 percent a year.

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

23           (e) Repealed by Acts of the 76th Legislature, Regular  
24 Session, 1999.

25           (f) In this chapter, "weekly ceiling," "monthly ceiling,"  
26 "quarterly ceiling," or "annualized ceiling" refers to that ceiling  
27 as determined after the application of this section.

1 SECTION 2.02. Subchapter A, Chapter 303, Finance Code, is  
2 amended by adding new Section 303.017 to read as follows:

3 Sec. 303.017. OPTIONAL RATE STRUCTURE FOR CONSUMER LOAN. A  
4 bank, savings association, savings bank, or credit union may  
5 contract for, charge, and receive a rate of interest under the  
6 authority of the applicable alternative rate ceiling of this  
7 chapter on a loan for personal, family, or household use. An  
8 authorized lender may charge all reasonable expenses and fees  
9 incurred in connection with making, closing, disbursing,  
10 extending, readjusting, or renewing a loan, whether or not those  
11 expenses or fees are paid to third parties. An authorized lender  
12 may alternatively elect to make a loan for personal, family, or  
13 household use under the provisions and restrictions of Chapter 342.

14 SECTION 2.03. Section 303.201, Finance Code, is amended to  
15 read as follows:

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

21 SECTION 2.04. Section 305.001, Finance Code, is amended to  
22 read as follows:

23 Sec. 305.001. LIABILITY FOR USURIOUS INTEREST. (a) A  
24 creditor who contracts for, charges, or receives interest that is  
25 greater than the amount authorized by this subtitle in connection  
26 with a transaction for personal, family, or household use is liable  
27 to the obligor for an amount that is equal to the greater of:

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

4           (2) \$2,000 or 20 percent of the amount of the  
5 principal, whichever is less.

6           (b) A creditor who contracts for or receives interest that  
7 is greater than the amount authorized by this subtitle in  
8 connection with a commercial transaction is liable to the obligor  
9 for an amount that is equal to three times the amount computed by  
10 subtracting the amount of interest allowed by law from the total  
11 amount of interest contracted for or received.

12           (c) [~~(b)~~] This section applies only to a contract or  
13 transaction subject to this subtitle.

14           (d) [~~(c)~~] A creditor who charges or receives interest in  
15 excess of the amount contracted for, but not in excess of the  
16 maximum amount authorized by law, is not subject to penalties for  
17 usurious interest but may be liable for other remedies and relief as  
18 provided by law.

19           SECTION 2.05. Section 305.002, Finance Code, is  
20 amended to read as follows:

21           Sec. 305.002. ADDITIONAL LIABILITY FOR MORE THAN TWICE  
22 AUTHORIZED RATE OF INTEREST. (a) In addition to the amount  
23 determined under Section 305.001, a creditor who charges and  
24 receives interest that is greater than twice the amount authorized  
25 by this subtitle is liable to the obligor for:

26           (1) the principal amount on which the interest is  
27 charged and received; and

1           (2) the interest and all other amounts charged and  
2 received.

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

5           SECTION 2.06. Section 306.001, Finance Code, is amended to  
6 read as follows:

7           Sec. 306.001. DEFINITIONS. In this chapter:

8           (1) "Account purchase transaction" means an agreement  
9 under which a person engaged in a commercial enterprise sells  
10 accounts, instruments, documents, or chattel paper subject to this  
11 subtitle at a discount, regardless of whether the person has a  
12 repurchase obligation related to the transaction.

13           (2) "Affiliate of an obligor" means a person who  
14 directly or indirectly, or through one or more intermediaries or  
15 other entities, owns an interest in, controls, is controlled by, or  
16 is under common control with the obligor. In this subdivision,  
17 "control" means the possession, directly or indirectly, or with  
18 another person or persons, of the power to direct or cause the  
19 direction of the management and policies of a person, whether  
20 through the ownership of voting securities, by contract, or  
21 otherwise.

22           (3) "Asset-backed securities" means debt obligations  
23 of beneficial ownership that:

24           (A) are a part of a single issue or single series  
25 of securities in an aggregate of \$1 million or more and issuable in  
26 one or more classes;

27           (B) are secured by a pledge of, or represent an

1 undivided ownership interest in:

2 (i) one or more fixed or revolving fund  
3 assets that by their terms convert into cash within a definite  
4 period; and

5 (ii) rights or other assets designed to  
6 assure the servicing or timely distribution of proceeds to security  
7 holders; and

8 (C) are issued for a business, commercial,  
9 agricultural, investment, or similar purpose by a pass-through  
10 entity.

11 (4) "Business entity" means a partnership,  
12 corporation, joint venture, limited liability company, or other  
13 business organization or business association, however organized.

14 (5) "Commercial loan" means a loan that is made  
15 primarily for business, commercial, investment, agricultural, or  
16 similar purposes. The term does not include a loan made primarily  
17 for personal, family, or household use.

18 (6) "Guaranty" means an agreement under which a  
19 person:

20 (A) assumes, guarantees, or otherwise becomes  
21 primarily or contingently liable for the payment or performance of  
22 an obligation of another person;

23 (B) provides security, by creation of a lien or  
24 security interest or otherwise, for the payment or performance of  
25 an obligation of another person; or

26 (C) agrees to purchase or to advance  
27 consideration to purchase an obligation of another person or

1 property that is security for the payment or performance of the  
2 obligation.

3 (7) "Pass-through entity" means a business entity,  
4 association, grantor or common-law trust under state law, or  
5 segregated pool of assets under federal tax law that, on the date of  
6 original issuance of asset-backed securities, does not have  
7 significant assets other than:

8 (A) assets pledged to or held for the benefit of  
9 holders of the asset-backed securities; or

10 (B) assets pledged to or held for the benefit of  
11 holders of other asset-backed securities previously issued.

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 regular scheduled date of  
19 payment.

20 (9) "Qualified commercial loan":

21 (A) means:

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

26 (a) \$1 [~~\$3~~] million or more if the  
27 commercial loan is secured by real property; or

1 (b) \$100,000 [~~\$250,000~~] or more if the  
2 commercial loan is not secured by real property and, if the  
3 aggregate value of the commercial loan is less than \$500,000, the  
4 loan documents contain a written verification from the borrower  
5 that:

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

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

12 (ii) a renewal or extension of a commercial  
13 loan described by Paragraph (A), regardless of the principal amount  
14 of the loan at the time of the renewal or extension; and

15 (B) does not include a commercial loan made for  
16 the purpose of financing a business licensed by the Motor Vehicle  
17 Board of the Texas Department of Transportation under Section  
18 2301.251(a), Occupations Code.

19 SECTION 2.07. Section 306.005, Finance Code, is amended to  
20 read as follows:

21 Sec. 306.005. PREPAYMENT PREMIUM [~~PENALTY~~]. A creditor and  
22 an obligor may agree to a prepayment premium [~~penalty~~] in a loan  
23 subject to this chapter. A prepayment premium [~~penalty~~] is not  
24 interest.

25 SECTION 2.08. Section 306.006, Finance Code, is amended to  
26 read as follows:

27 Sec. 306.006. CERTAIN AUTHORIZED CHARGES ON COMMERCIAL



1 LOANS. In addition to the interest authorized by this chapter, the  
2 parties to a commercial loan may agree and stipulate for:

3 (1) a delinquency charge on the amount of any  
4 installment or other amount in default for a period of not less than  
5 10 days in a reasonable amount not to exceed five percent of the  
6 total amount of the installment; and

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

12 SECTION 2.09. Chapter 306, Finance Code, is amended by  
13 adding new Section 306.007 to read as follows:

14 Sec. 306.007. GUARANTIES, ASSUMPTIONS, PAYMENTS, AND OTHER  
15 AGREEMENTS WITH RESPECT TO A COMMERCIAL LOAN TO AN OBLIGOR. With  
16 respect to any commercial loan, an obligor may be required to  
17 assume, pay, or provide a guaranty of another person's existing or  
18 future obligation, and the other person's obligation shall not  
19 constitute interest with respect to any obligation of the obligor.

20 SECTION 2.10. Section 345.104, Finance Code, is amended to  
21 read as follows:

22 Sec. 345.104. USE OF OPTIONAL CEILING. (a) As an  
23 alternative to the maximum rate or amount authorized for a time  
24 price differential under Section 345.103, a retail charge agreement  
25 may provide for a rate or amount of time price differential that  
26 does not exceed~~[+]~~

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

1 ~~or~~

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

4           (b) The provisions of Chapter 303 applicable to open-end  
5 accounts apply to a retail charge agreement to which this section  
6 applies.

7           SECTION 2.11. Section 346.003, Finance Code, is amended to  
8 read as follows:

9           Sec. 346.003. REVOLVING CREDIT ACCOUNTS. (a) A revolving  
10 credit account is an open-end account:

11           (1) that is established by a creditor for a customer  
12 under a written agreement between the creditor and the customer;

13           (2) that the customer accepts by using the account;  
14 and

15           (3) under which:

16           (A) the unpaid balance of and interest on the  
17 extensions of credit are debited to the account;

18           (B) interest is not precomputed but may be  
19 computed on the balances of the account outstanding from time to  
20 time;

21           (C) the customer may defer payment of any part of  
22 the balance of the account; and

23           (D) the customer may obtain from the creditor one  
24 or more extensions of credit as described by Subsection (b) [~~or~~  
25 ~~(c)~~].

26           (b) A revolving loan account is a revolving credit account  
27 under which a customer may obtain a loan from a creditor.

1 (c) [~~A revolving triparty account is a revolving credit~~  
2 ~~account under which:~~

3 [~~(1) a customer may use a credit card to:~~

4 [~~(A) obtain a loan from a creditor, with the~~  
5 ~~advance made by the creditor or a person participating with the~~  
6 ~~creditor;~~

7 [~~(B) lease goods from a person participating with~~  
8 ~~the creditor; or~~

9 [~~(C) purchase goods or services from a person~~  
10 ~~participating with the creditor;~~

11 [~~(2) the creditor is obligated to pay the~~  
12 ~~participating person; and~~

13 [~~(3) the customer is obligated to pay the creditor the~~  
14 ~~amount of the loan or the cost of the lease or purchase.~~

15 ~~(d)]~~ Interest may be computed on the balance of the account  
16 from time to time.

17 SECTION 2.12. Section 346.004, Finance Code, is amended to  
18 read as follows:

19 Sec. 346.004. APPLICATION OF CHAPTER TO REVOLVING CREDIT  
20 ACCOUNTS. Unless the contract for account provides that this  
21 chapter applies [~~otherwise~~], this chapter does not apply [~~applies~~]  
22 to a revolving credit account described by Section 346.003 if  
23 [~~regardless of whether~~] the loan or extension of credit is for  
24 commercial [~~consumer~~] or business purposes.

25 SECTION 2.13. Subchapter A, Chapter 346, Finance Code, is  
26 amended by adding new Section 346.006 to read as follows:

27 Sec. 346.006. CREDIT CARD ACCOUNT. A credit card account is

1 a revolving credit account under which:

2 (1) a customer may use a credit card to:

3 (A) obtain a loan from a creditor, with the  
4 advance made by the creditor or a person participating with the  
5 creditor;

6 (B) lease goods from a person participating with  
7 the creditor; or

8 (C) purchase goods or services from a person  
9 participating with the creditor;

10 (2) the creditor is obligated to pay the participating  
11 person; and

12 (3) the customer is obligated to pay the creditor the  
13 amount of the loan or the cost of the lease or purchase.

14 SECTION 2.14. Subchapter C, Chapter 346, Finance Code, is  
15 redesignated Subchapter D.

16 SECTION 2.15. Chapter 346, Finance Code is amended by  
17 adding new Subchapter C to read as follows:

18 SUBCHAPTER C. INTEREST CHARGE AND FEES FOR CREDIT CARD  
19 ACCOUNTS.

20 Sec. 346.151. MAXIMUM INTEREST RATE. (a) A credit card  
21 account may provide for interest on an account at an annual rate  
22 that does not exceed 24 percent a year.

23 (b) A credit card account may provide for interest computed  
24 under a method other than the average daily balance method if the  
25 amount of interest computed under that method does not exceed 24  
26 percent a year, as calculated using the average daily balance  
27 method.

1           Sec. 346.152. PERMISSIBLE INTEREST RATE FOR BILLING CYCLE.

2           (a) A credit card account that provides for equal billing cycles  
3           may provide for interest for a billing cycle at the rate equal to  
4           one-twelfth of the applicable annual interest rate on the account  
5           during that billing cycle.

6           (b) In any 12-month period, billing cycles are considered to  
7           be equal if:

8                   (1) the number of billing cycles in the period does not  
9                   exceed 12; and

10                   (2) the difference between the length of the longest  
11                   and shortest billing cycles in the period does not exceed eight  
12                   calendar days.

13           Sec. 346.153. FEES. If the contract provides, the lender or  
14           issuer of an account may charge or collect any of the following  
15           fees:

16                   (1) an annual or other periodic charge;

17                   (2) a transaction charge for each separate purchase,  
18                   loan, or advance;

19                   (3) a minimum interest charge for each regular billing  
20                   date on which interest charges are due on unpaid balances;

21                   (4) A late payment or delinquency charge;

22                   (5) A returned payment charge;

23                   (6) A stop payment charge;

24                   (7) An overlimit charge;

25                   (8) A charge for providing invoices, checks, or  
26                   documentary evidence;

27                   (9) A fee incident to the application for and the

1 opening and administration of the credit card account; or

2 (10) An automated teller machine or similar electronic  
3 or interchange fee or charge.

4 SECTION 2.16. Subchapter A, Chapter 347, Finance Code, is  
5 amended by adding new Section 347.007 to read as follows:

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

10 SECTION 2.17. Section 348.001, Finance Code, is amended to  
11 read as follows:

12 Sec. 348.001. DEFINITIONS. In this chapter:

13 (1) "Buyer's order" means a nonbinding, preliminary  
14 written computation relating to the purchase in a retail  
15 installment transaction of a motor vehicle that describes  
16 specifically:

17 (A) the motor vehicle being purchased; and

18 (B) each motor vehicle being traded in.

19 (2) "Heavy commercial vehicle" means:

20 (A) a truck or truck tractor that:

21 (1) has a gross vehicular weight of 19,000  
22 pounds or more; and

23 (2) is not used primarily for personal,  
24 family, or household use; or

25 (B) a trailer or semitrailer designed for use in  
26 combination with a vehicle described by Paragraph (A).

27 (3) "Holder" means:

1 (A) a retail seller; or

2 (B) if a retail installment contract or the  
3 outstanding balance under the contract is sold or otherwise  
4 transferred, the person to whom it is sold or otherwise  
5 transferred.

6 (4) "Motor home" means a motor vehicle that is  
7 designed to provide temporary living quarters and that:

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

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

15 (i) a cooking facility with an on-board  
16 fuel source;

17 (ii) a gas or electric refrigerator;

18 (iii) a toilet with exterior evacuation;

19 (iv) a heating or air conditioning system  
20 with an on-board power or fuel source separate from the vehicle  
21 engine;

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

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

26 (5) [~~4~~] "Motor vehicle" means an automobile, motor  
27 [mobile] home, truck, truck tractor, trailer, semitrailer, or bus

1 designed and used primarily to transport persons or property on a  
2 highway. The term includes a commercial vehicle or heavy  
3 commercial vehicle. The term does not include:

4 (A) a boat trailer;

5 (B) a vehicle propelled or drawn exclusively by  
6 muscular power;

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

9 (D) machinery that is not designed primarily for  
10 highway transportation but [~~buy~~] may incidentally transport  
11 persons or property on a public highway.

12 (6) [~~(5)~~] "Retail buyer" means a person who purchases  
13 or agrees to purchase a motor vehicle from a retail seller in a  
14 retail installment transaction.

15 (7) [~~(6)~~] "Retail installment contract" means one or  
16 more instruments entered into in this state that evidence a retail  
17 installment transaction. The term includes a chattel mortgage, a  
18 conditional sale contract, a security agreement, and a document  
19 that evidences a bailment or lease described by Section 348.002.  
20 The term does not include a buyer's order.

21 (8) [~~(7)~~] "Retail installment transaction" means a  
22 transaction in which a retail buyer purchases a motor vehicle from a  
23 retail seller other than principally for the purpose of resale and  
24 agrees with the retail seller to pay part or all of the cash price in  
25 one or more deferred installments.

26 (9) [~~(8)~~] "Retail seller" means a person in the  
27 business of selling motor vehicles to retail buyers in retail



1 installment transactions.

2 (10) [~~9~~] "Time price differential" means the total  
3 amount added to the principal balance to determine the balance of  
4 the retail buyer's indebtedness under a retail installment  
5 contract.

6 (11) "Towable recreation vehicle" means a  
7 nonmotorized vehicle that:

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

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

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

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

16 and

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

18 SECTION 2.18. Chapter 348.007, Finance Code, is amended to  
19 read as follows:

20 Sec. 348.007. APPLICABILITY OF CHAPTER. (a) Each retail  
21 installment transaction is subject to this chapter.

22 (b) A transaction in which a retail buyer purchases a  
23 towable recreation vehicle from a retail seller other than  
24 principally for the purpose of resale and agrees with the retail  
25 seller to pay part of all of the cash price in one or more deferred  
26 installments may be subject to this chapter instead of Chapter 345  
27 at the option of the seller.

1           (c) [~~(b)~~] This chapter does not affect or apply to a loan  
2 made or the business of making loans under other law of this state  
3 and does not affect a rule of law applicable to a retail installment  
4 sale that is not a retail installment transaction.

5           (d) [~~(e)~~] The provisions of this chapter defining specific  
6 rates and amounts of charges and requiring certain credit  
7 disclosures to be made control over any contrary law of this state  
8 respecting those subjects.

9           SECTION 2.19. Section 124.002, Finance Code, is amended to  
10 read as follows:

11           Sec. 124.002. LIMITATIONS ON INTEREST RATES. The interest  
12 rate on a loan to a member may not exceed:

13                   (1) 1-1/2 percent per month on the unpaid balance;

14 [~~or~~]

15                   (2) 24% per year for credit card accounts; or

16                   (3) a higher rate authorized by law, including a rate  
17 authorized by Chapter 303.

18           ARTICLE 3. TEXAS SAVINGS AND MORTGAGE LENDING DEPARTMENT

19           SECTION 3.01. NAME CHANGE. (a) The Legislature finds:

20                   (1) The Texas Savings and Loan Department regulates  
21 state-chartered savings and loan institutions and savings banks,  
22 licensed mortgage brokers and loan officers. The department also  
23 registers mortgage bankers;

24                   (2) There is one state-chartered savings and loan  
25 institution that has not converted to a state-chartered savings  
26 bank or other form of institution; and

27                   (3) The department's name no longer fits the

1 activities and regulatory responsibilities of the department, and  
2 the department's name does not provide sufficient clarity of its  
3 functions to the public.

4 (b) The Savings and Loan Department is renamed the  
5 Department of Savings and Mortgage Lending.

6 (c) Whenever a provision of a statute or rule refers to the  
7 Savings and Loan Department, the term shall mean the Department of  
8 Savings and Mortgage Lending.

9 (d) Whenever a provision of a statute or rule refers to the  
10 savings and loan commissioner, the term shall mean the savings and  
11 mortgage lending commissioner.

12 SECTION 3.02. Section 119.201(a), Finance Code, is amended  
13 to read as follows:

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

20 SECTION 3.03. The commissioner shall study the desirability  
21 and feasibility of developing alternative thrift charters,  
22 including special purpose charters, and shall issue a report,  
23 including findings and legislative recommendations, to the  
24 legislature no later than December 31, 2006.

25 ARTICLE 4. CONSUMER CREDIT COMMISSIONER

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

1           Sec. 14.208. INJUNCTION; APPEAL. (a) If the commissioner  
2 has reasonable cause to believe that a person is violating or is  
3 about to violate a statute to which this chapter applies, the  
4 commissioner, in addition to any other authorized action, may issue  
5 without notice and hearing an order [~~the person~~] to cease and desist  
6 [~~refrain~~] from the violation or an order to take affirmative action  
7 or both to enforce compliance. [~~A person may appeal the order to~~  
8 ~~the finance commission in accordance with Chapter 2001, Government~~  
9 ~~Code.~~]

10           (b) If a person against whom the order is made requests a  
11 hearing, the commissioner shall set and give notice of a hearing  
12 before the commissioner or a hearings officer. The hearing shall be  
13 governed by Chapter 2001, Government Code. Based on the findings of  
14 fact, conclusions of law, and recommendations of the hearings  
15 officer, the commissioner by order may find a violation has  
16 occurred or not occurred.

17           (c) If a hearing has not been requested under Subsection (b)  
18 not later than the 30th day after the date the order is made, the  
19 order is considered final and not appealable. The commissioner,  
20 after giving notice, may impose against a person who violates a  
21 cease and desist order an administrative penalty in an amount not to  
22 exceed \$1,000 for each day of violation. In addition to any other  
23 remedy provided by law, the commissioner may institute in district  
24 court a suit for injunctive relief and to collect an administrative  
25 penalty. A bond is not required of the commissioner with respect to  
26 injunctive relief granted under this section. [~~The commissioner,~~  
27 ~~on relation of the attorney general at the request of the~~

1 ~~commissioner, may also bring action in district court to enjoin the~~  
2 ~~person from engaging in or continuing the violation or doing an act~~  
3 ~~that furthers the violation.] In the action, the court may enter as~~  
4 proper an order awarding a preliminary or final injunction.

5 SECTION 4.02. The title of Subchapter F, Chapter 14,  
6 Finance Code, is amended to read as follows:

7 SUBCHAPTER F. ADMINISTRATIVE PENALTY; RESTITUTION ORDER;

8 ASSURANCE OF VOLUNTARY COMPLIANCE

9 SECTION 4.03. Section 14.252, Finance Code, is amended to  
10 read as follows:

11 Sec. 14.252. AMOUNT OF PENALTY. (a) The commissioner may  
12 assess an administrative penalty for a violation in an amount not to  
13 exceed \$2,500 [~~\$1,000~~] for each day of the violation.

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

17 (1) ~~\$50,000, or~~

18 (2) ~~\$5,000 for each business location at which an~~  
19 ~~element of violation occurred.~~

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

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

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

26 (3) the history of violations;

27 (4) the amount necessary to deter future violations;

1 (5) efforts to correct the violation; and

2 (6) any other matter that justice may require.

3 SECTION 4.04. Section 14.258, Finance Code, is amended to  
4 read as follows:

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

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

16 [~~See, also, italicized material following text of this~~  
17 ~~section.~~]

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

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

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

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

3 ~~Section 5 of Acts 1997, 75th Leg., ch. 1396, eff. Sept. 1, 1997,~~  
4 ~~amends subsec. (1) of Vernon's Ann.Civ.St. art. 5069-2.03(A) [now~~  
5 ~~this section] without reference to the repeal of said article by~~  
6 ~~Acts 1997, 75th Leg., ch. 1008, Sec. 6. As so amended, subsec. (1)~~  
7 ~~reads:~~

8 ~~["When the judgment of the court becomes final, the court shall~~  
9 ~~proceed under this subsection. If the person paid the amount of the~~  
10 ~~penalty and if that amount is reduced or is not upheld by the court,~~  
11 ~~the court shall order that the appropriate amount plus accrued~~  
12 ~~interest be remitted to the person. The rate of the interest is the~~  
13 ~~rate authorized by Chapter 1E of this title, and the interest shall~~  
14 ~~be paid for the period beginning on the date the penalty was paid~~  
15 ~~and ending on the date the penalty is remitted."]~~

16 SECTION 4.05. Chapter 14, Finance Code, is amended by  
17 adding new Sections 14.261-14.264 to read as follows:

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

- 23 (1) this chapter or a rule adopted under this chapter;  
24 (2) Chapter 394; or  
25 (3) Subtitle B, Title 4 or a rule adopted under  
26 Subtitle B, Title 4.

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

1 commissioner.

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

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

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

- 12 (1) this chapter or a rule adopted under this chapter;  
13 (2) Chapter 394; or  
14 (3) Subtitle B, Title 4 or a rule adopted under  
15 Subtitle B, Title 4.

16 (b) Unless an assurance of voluntary compliance is  
17 rescinded by agreement, a subsequent failure to comply with the  
18 assurance is prima facie evidence of a violation of:

- 19 (1) this chapter or a rule adopted under this chapter;  
20 (2) Chapter 394; or  
21 (3) Subtitle B, Title 4 or a rule adopted under  
22 Subtitle B, Title 4.

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

25 Sec. 14.264. RIGHT TO BRING ACTION NOT AFFECTED. An  
26 assurance of voluntary compliance does not affect the right of an  
27 individual to bring an action, except that the right of an



1 individual in relation to money received according to a stipulation  
2 under Section 14.261(c) is governed by the terms of the assurance.

3 SECTION 4.06. Sections 371.303(a)-(c), Finance Code, are  
4 amended to read as follows:

5 Sec. 371.303. ADMINISTRATIVE PENALTY. (a) The  
6 commissioner may assess an administrative penalty against a person  
7 who violates this chapter or a rule adopted under this chapter.

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

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

13 ~~(2) for a violation of Section 371.304,]~~ not to exceed  
14 \$1,000.

15 (c) Each day a violation continues or occurs may be  
16 considered a separate violation for purposes of this section. The  
17 aggregate amount of penalties that may be assessed under this  
18 section against a person during one calendar year may not exceed  
19 \$50,000 [~~\$10,000~~] for violations an element of which occurred at  
20 the same business location.

21 ARTICLE 5. SAVINGS BANKS AND LIMITED SAVINGS BANKS

22 SECTION 5.01. Section 91.002, Finance Code, is amended by  
23 amending Subdivisions (2) and (18) and adding new Subdivision (26)  
24 to read as follows:

25 (2) "Board" means the board of directors of a savings  
26 bank or the managers of a savings bank organized as a limited  
27 savings bank.

1 (18) "Member" means:

2 (A) with respect to a mutual savings bank, a  
3 person:

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

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

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

10 (B) with respect to a savings bank organized as a  
11 limited savings bank, a person who owns a membership interest in the  
12 limited savings bank.

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

16 SECTION 5.02. Section 92.001, Finance Code, is amended to  
17 read as follows:

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

26 (b) With respect to a savings bank organized as a limited  
27 savings bank prior to January 1, 2006, the Texas Limited Liability

1 Act, and any other law relating to a limited liability company  
2 organized in Texas apply to a limited savings bank to the extent not  
3 inconsistent with this subtitle or the proper business of a limited  
4 savings bank.

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

11 (d) With respect to a savings bank organized as a limited  
12 savings bank on or after January 1, 2006, the provisions of the  
13 Business Organizations Code applicable to a limited liability  
14 company organized in Texas apply to a limited savings bank to the  
15 extent not inconsistent with this subtitle or the proper business  
16 of a limited savings bank.

17 (e) With respect to a savings bank or limited savings bank  
18 organized prior to January 1, 2006, the finance commission may  
19 establish rules permitting a savings bank or limited savings bank  
20 to elect to be governed by the provisions of the Business  
21 Organizations Code to the extent not inconsistent with this  
22 subtitle or the proper business of a savings bank or limited savings  
23 bank.

24 SECTION 5.03. Section 92.201, Finance Code, is amended to  
25 read as follows:

26 Sec. 92.201. PURPOSE OF INCORPORATION. A person may apply  
27 to incorporate a savings bank for the purpose of:

1           (1) purchasing the assets, assuming the liabilities  
2 other than liability to shareholders, and continuing the business  
3 of a financial institution the commissioner considers to be in an  
4 unsafe condition; ~~[or]~~

5           (2) acquiring an existing financial institution by  
6 merger; or

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

9           SECTION 5.04. Section 92.102, Finance Code, is amended to  
10 read as follows:

11           Sec. 92.102. INCORPORATION REQUIREMENTS.       (a)       An  
12 application to incorporate a savings bank under this subchapter  
13 must be submitted to the commissioner.

14           (b) The application must include information required by  
15 the commissioner or by rule of the finance commission.

16           (c) The savings bank must have capital in an amount  
17 determined by the commissioner to be sufficient to carry out the  
18 purposes for which incorporation is requested.

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

21           (1) [~~if~~] the commissioner considers the financial  
22 institution to be reorganized or merged to be in an unsafe  
23 condition; or [~~+~~]

24           (2) the savings bank incorporated under this  
25 subchapter does not survive the merger or is facilitating the  
26 continuation of an existing savings bank corporate reorganization  
27 as defined by rules adopted by the finance commission.

1           ~~[(1) Chapter 2001, Government Code, does not apply to~~  
2 ~~the application; and]~~

3           (e) [(2)] If the commissioner considers the financial  
4 institution to be reorganized or merged to be in an unsafe  
5 condition, the application and all information relating to the  
6 application are confidential and not subject to public disclosure.

7           SECTION 5.05. Section 92.156, Finance Code, is amended to  
8 read as follows:

9           Sec. 92.156. INDEMNITY BONDS OF DIRECTORS, OFFICERS, AND  
10 EMPLOYEES. (a) A savings bank shall maintain ~~[on file with the~~  
11 ~~commissioner]~~ a blanket indemnity bond with an adequate corporate  
12 surety protecting the savings bank from loss by or through  
13 dishonest or criminal action or omission, including fraud, theft,  
14 robbery, or burglary, by an officer or employee of the savings bank  
15 or a director of the savings bank when the director performs the  
16 duty of an officer or employee.

17           (b) A savings bank that employs a collections agent who is  
18 not covered by the bond required by Subsection (a) shall provide for  
19 the bonding of the agent in an amount equal to at least twice the  
20 average monthly collection of the agent unless the agent is a  
21 financial institution insured by the Federal Deposit Insurance  
22 Corporation. An agent shall settle with the savings bank at least  
23 monthly.

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 (d) The bond must provide that a cancellation by the surety  
2 or the insured is not effective until the earlier of:

3 (1) the date the commissioner approves; or

4 (2) the 30th day after the date written notice of the  
5 cancellation is given to the commissioner.

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

8 SECTION 5.06. Section 92.204, Finance Code, is amended to  
9 read as follows:

10 Sec. 92.204. QUALIFIED THRIFT LENDER [~~QUALIFICATION UNDER~~  
11 ~~INTERNAL REVENUE CODE ASSET~~] TEST. (a) A savings bank must either:  
12 [~~qualify under and continue to meet:~~

13 ~~(1) the asset test of Section 7701(a)(19), Internal~~  
14 ~~Revenue Code of 1986 (26 U.S.C. Section 7701(a)(19)); or~~

15 [~~(2)~~] (1) qualify under and continue to meet the  
16 qualified thrift lender test of Section 10(m), Home Owners' Loan  
17 Act (12 U.S.C. Section 1467a(m)); or

18 (2) maintain more than 50 percent of its portfolio  
19 assets in qualified thrift assets as defined in Subsection (b) of  
20 this section on a monthly average basis in at least nine out of 12  
21 months.

22 (b) For purposes of Subsection (a)(2) of this section, the  
23 term "qualified thrift assets" shall mean:

24 (1) qualified thrift assets as defined and calculated  
25 by 12 U.S.C. Section 1467a(m)(4)(C); and

26 (2) such other assets as are determined by the  
27 commissioner, under rules adopted by the finance commission, to be

1 substantially equivalent to qualified thrift assets described by  
2 Subsection (b)(1) or which further residential lending or community  
3 development.

4 (c) [~~(b)~~] The commissioner may grant temporary or limited  
5 exceptions to the requirements of this section as the commissioner  
6 considers necessary.

7 SECTION 5.07. Section 92.207, Finance Code, is amended to  
8 read as follows:

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

14 SECTION 5.08. Section 92.208, Finance Code, is amended to  
15 read as follows:

16 Sec. 92.208. COMMON STOCK. (a) A savings bank may not  
17 issue common stock before the common stock is fully paid for in  
18 cash.

19 (b) A savings bank may not make a loan against the shares of  
20 its outstanding common stock.

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

24 (d) A savings bank may not retire or redeem common stock  
25 until:

26 (1) all liabilities of the savings bank are satisfied,  
27 including all amounts due to holders of deposit accounts, unless:

1 (A) prior written permission is obtained from the  
2 commissioner; and

3 (B) the retirement or redemption is authorized by  
4 a majority vote of the savings bank's shareholders at an annual  
5 meeting or a special meeting called for that purpose;

6 (2) the basis of the retirement or redemption is  
7 approved by the commissioner; and

8 (3) the savings bank files written consent of the  
9 Federal Deposit Insurance Corporation with the commissioner.

10 (e) Subsections (b) and (c) of this section also apply to  
11 the securities of the savings bank's holding company and  
12 affiliates.

13 SECTION 5.09. Section 92.211, Finance Code, is amended to  
14 read as follows:

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

20 (b) Without the prior approval of the commissioner, no cash  
21 dividend may be declared by the board of a savings bank that the  
22 commissioner considers:

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

24 (2) to have total retained income on the date of the  
25 dividend declaration to be less than zero.

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



1 (b) The application to convert must:

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

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

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

8 (b) The application to convert must:

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

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

13 SECTION 5.12. Section 92.351(a), Finance Code, is amended  
14 to read as follows:

15 (a) A savings bank may reorganize, merge, or consolidate  
16 with a corporation, another financial institution, or another  
17 entity under a plan approved by the board.

18 SECTION 5.13. Chapter 92, Finance Code, is amended by  
19 adding new Subchapter M to read as follows:

20 SUBCHAPTER M. LIMITED SAVINGS BANK

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

24 (1) an application to organize a limited savings bank  
25 that is:

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

27 (B) signed by each organizer; and

1           (2) the filing fee.

2           (b) An application must contain:

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

5                   (A) the name of the savings bank;

6                   (B) the location of the principal office; and

7                   (C) the names and addresses of the initial  
8 managers; and

9                   (D) to the extent such provisions are not  
10 inconsistent with this subtitle, the proper business of a savings  
11 bank, or a rule adopted by the finance commission related to savings  
12 banks, such other provisions as may be included in:

13                           (i) the articles of organization of a  
14 limited liability company organized under the Texas Limited  
15 Liability Company Act, if the limited savings bank was organized  
16 prior to January 1, 2006; or

17                           (ii) the certificate of formation of a  
18 limited liability company organized under Chapter 101 of the  
19 Business Organization code if:

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

22                                   (b) the organizers elect to include  
23 such provisions, if the limited savings bank was organized prior to  
24 January 1, 2006;

25                   (2) two copies of the savings bank's company agreement  
26 or by-laws;

27           (3) data sufficiently detailed and comprehensive in

1 nature to enable the commissioner to make findings under Section  
2 92.058, including statements, exhibits, and maps;

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

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

8 (c) Financial information described by Subsection (b) is  
9 confidential and not subject to public disclosure unless the  
10 commissioner finds that disclosure is necessary and in the public  
11 interest.

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

13 (e) The provisions of Subchapter B, Chapter 92 of this title  
14 shall apply to the organization of a limited savings bank except to  
15 the extent such provisions are inconsistent with the provisions of  
16 this section.

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

26 Sec. 92.603. CONTRIBUTIONS. A member of a limited savings  
27 bank is obligated to make contributions as required in the company

1 agreement.

2 Sec. 92.604. MANAGERS OF A LIMITED SAVINGS BANK. (a)  
3 Management of a limited savings bank shall be exercised by a board  
4 of managers consisting of not less than five nor more than 21  
5 persons.

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

8 (c) The governing documents of a limited savings bank may  
9 use "director" instead of "manager" and "board" instead of "board  
10 of managers."

11 Sec. 92.605. WITHDRAWAL OR REDUCTION OF MEMBER'S  
12 CONTRIBUTION. (a) A member may not receive from a limited savings  
13 bank any part of the member's contribution except as may be provided  
14 in a rule adopted by the finance commission regulating withdrawal  
15 or reduction.

16 (b) In no event may a member receive any part of the member's  
17 contribution if, after the withdrawal or reduction, the capital of  
18 the savings bank would be reduced to less than the minimum capital  
19 established for the incorporation or operation of a savings bank by  
20 this subtitle or a rule adopted pursuant to authority granted by  
21 this subtitle.

22 Sec. 92.606. COMPANY AGREEMENT OF LIMITED SAVINGS BANK.  
23 (a) A limited savings bank shall adopt a company agreement which  
24 shall contain provisions regulating the management and  
25 organization of the limited savings bank which shall be subject to  
26 the approval of the commissioner and which shall contain such  
27 provisions as the finance commission may require by a rule adopted

1 under this subchapter.

2 (b) At the option of the limited savings bank, the term  
3 "by-laws" may be substituted for the term "company agreement."

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

6 (1) the expiration of the period fixed for the  
7 duration of the limited savings bank; or

8 (2) the occurrence of events specified in the articles  
9 of organization, certificate of formation, or company agreement to  
10 cause dissolution.

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

13 Sec. 92.608. ALLOCATION OF PROFITS AND LOSSES. The profits  
14 and losses of a limited savings bank may be allocated among the  
15 members and among classes of members as provided by the company  
16 agreement. Without the prior written approval of the commissioner  
17 to use a different allocation method, the profits and losses must be  
18 allocated according to the relative interests of the members in the  
19 limited savings bank.

20 Sec. 92.609. DISTRIBUTIONS. Subject to rules adopted by  
21 the finance commission, distributions of cash or other assets of a  
22 limited savings bank may be made to the members as provided by the  
23 company agreement. Without the prior written approval of the  
24 commissioner to use a different distribution method, distributions  
25 must be made to the members according to the relative interests of  
26 the members as reflected in the governing documents of the limited  
27 savings bank filed with and approved by the commissioner.

1       Sec. 92.610. AMENDMENT OF GOVERNING DOCUMENTS. (a) A  
2 limited savings bank may amend its articles of organization or  
3 certificate of formation by a majority vote of the members cast at  
4 any annual meeting or a special meeting called for that purpose  
5 unless the articles of organization or certificate of formation  
6 should require a higher percentage.

7       (b) If provided in the governing documents, the company  
8 agreement or by-laws of a limited savings bank may be amended by a  
9 majority vote of the board of managers unless the governing  
10 documents should require a higher percentage. In the absence of an  
11 express provision in the governing documents, the company agreement  
12 or by-laws may be amended by a majority vote of the members cast at  
13 any annual meeting or special meeting called for that purpose.

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

16       Sec. 92.611. APPLICATION OF OTHER PROVISIONS TO LIMITED  
17 SAVINGS BANKS; MISCELLANEOUS PROVISIONS. (a) All of the  
18 provisions of Subtitle C apply to a savings bank organized as a  
19 limited savings bank under this subchapter. In the event of a  
20 conflict between this subchapter and any provision of Subtitle C,  
21 the provisions of this subchapter shall control unless the finance  
22 commission by rule orders that the provision of Subtitle C  
23 controls.

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

26               (1) a manager is considered to be a director, and the  
27 board of managers is considered to be the board of directors;

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

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

3           (c) When a provision of a statute or rule uses the term  
4 "savings bank," the term shall include a savings bank organized as a  
5 limited savings bank unless the context clearly requires that a  
6 limited savings bank is not included within the term or the  
7 provision contains express language excluding a limited savings  
8 bank.

9           (d) The term "governing document" means a limited savings  
10 bank's articles of organization, certificate of formation, company  
11 agreement, or by-laws.

12           SECTION 5.14. Section 93.001(c), Finance Code, is amended  
13 to read as follows:

14           (c) A savings bank may:

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

16                 (2) adopt and operate a reasonable bonus plan,  
17 profit-sharing plan, stock bonus plan, stock option plan, pension  
18 plan, or similar incentive plan for its directors, officer, or  
19 employees, subject to any limitations under this subtitle or rules  
20 adopted under this subtitle;

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

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

27                 (5) pledge its assets to secure deposits of public

1 money of any state or of a political corporation or political  
2 subdivision of any state or of any other entity or organization  
3 deemed to serve a public purpose according to rules adopted by the  
4 finance commission.

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

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

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

17 (9) receive and repay any deposit or account in  
18 accordance with this subtitle and rules of the finance commission;  
19 and

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

22 SECTION 5.15. Section 93.008, Finance Code, is amended to  
23 read as follows:

24 Sec. 93.008. POWERS RELATIVE TO OTHER FINANCIAL  
25 INSTITUTIONS. (a) A savings bank may make a loan or investment or  
26 engage in an activity permitted:

27 (1) under state law for a bank or savings and loan



1 association; or

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

5 (b) Notwithstanding any other law, as permitted by rules  
6 adopted by the finance commission, a savings bank may perform an  
7 act, own property, or offer a product or service that is at the time  
8 permissible for a depository institution organized under the law of  
9 another state within the United States.

10 SECTION 5.16. Section 94.201, Finance Code, is amended to  
11 read as follows:

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

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

19 (2) home improvement loans;

20 (3) interim residential construction loans;

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

23 (5) loans for community reinvestment; and

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

27 SECTION 5.17. Section 96.503(a), Finance Code, is amended

1 to read as follows:

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

9 SECTION 5.18. Chapter 97, Finance Code, is amended by  
10 designating Sections 97.001-97.007 as "Subchapter A. General  
11 Provisions Applicable to Holding Companies" and adding new  
12 Subchapter B to read as follows:

13 SUBCHAPTER B. MUTUAL HOLDING COMPANIES

14 Sec. 97.051. REORGANIZATION TO BECOME MUTUAL HOLDING  
15 COMPANY. (a) Notwithstanding any other provision of law, any  
16 savings bank may be reorganized in order to become a mutual holding  
17 company by submitting to the commissioner an application for  
18 approval of reorganization.

19 (b) An application for reorganization shall have been  
20 approved by a majority vote of the members or shareholders of the  
21 savings bank cast at an annual meeting or a special meeting called  
22 to consider the reorganization.

23 Sec. 97.052. APPLICATION FOR APPROVAL OF REORGANIZATION.

24 The application for approval of reorganization shall contain:

25 (1) a brief statement summarizing a reorganization  
26 plan;

27 (2) two copies of the proposed articles of

1 incorporation of the subsidiary savings bank acknowledged by the  
2 incorporators of the subsidiary savings bank;

3 (3) two copies of the proposed by-laws of the savings  
4 bank;

5 (4) a statement that the plan of reorganization was  
6 advised, authorized, and approved by the savings bank in the manner  
7 and by the vote required by its charter and the laws of this state;  
8 and

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

10 Sec. 97.053. PLAN OF REORGANIZATION. (a) The plan of  
11 reorganization shall provide that:

12 (1) a subsidiary savings bank shall:

13 (A) be incorporated pursuant to Chapter 92 of  
14 this subtitle; or

15 (B) upon prior approval of the commissioner,  
16 shall be incorporated pursuant to Chapter 92 of this subtitle;

17 (2) the savings bank shall transfer a substantial part  
18 of its assets to the subsidiary savings bank, and the subsidiary  
19 savings bank shall assume a substantial part of the savings bank's  
20 liabilities, including all depository liabilities;

21 (3) as a result of the reorganization of the savings  
22 bank into a mutual holding company, the mutual holding company  
23 shall hold more than 50 percent of the stock of the subsidiary  
24 savings bank; and

25 (4) after transfer and assumption, persons with prior  
26 corresponding rights as depositors or creditors against a savings  
27 bank shall have the same rights with respect to the mutual holding

1 company and the subsidiary savings bank.

2 (b) The plan of reorganization shall set forth the necessary  
3 corporate steps for the savings bank to reorganize into a mutual  
4 holding company, including:

5 (1) all required charter amendments; and

6 (2) a description of the corporate management of the  
7 reorganized mutual holding company.

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

10 ARTICLE 6. AMENDMENTS TO MORTGAGE BROKER LICENSE ACT

11 SECTION 6.01. Section 156.002(10) is amended to read as  
12 follows:

13 (10) "Mortgage loan" means:

14 (A) a debt against real estate secured by a  
15 first-lien security interest against one-to-four family  
16 residential real estate created by a deed of trust, security deed,  
17 or other security instrument;

18 (B) a lease for a term in excess of 180 days of  
19 one-to-four family residential real estate that includes an option  
20 to purchase where any portion of the lease payment is applied to the  
21 purchase price; or

22 (C) an executory contract for the conveyance of  
23 real property intended to be used as one-to-four family residential  
24 real estate where the purchase price is payable in four or more  
25 installments.

26 SECTION 6.02. Section 156.005, Finance Code, is amended to  
27 read as follows:

1           Sec. 156.005. AFFILIATED BUSINESS ARRANGEMENTS. Unless  
2 prohibited by federal or state law, this chapter may not be  
3 construed to prevent affiliated or controlled business  
4 arrangements or loan origination services by or between mortgage  
5 brokers and other professionals if the mortgage broker complies  
6 with all applicable federal and state laws permitting those  
7 arrangements or services.

8           SECTION 6.03. Section 156.104, Finance Code, is amended by  
9 adding new Subsection (j) to read as follows:

10           (j) If the advisory committee takes a record vote on a  
11 matter described by Subsection (h), and the matter is brought by the  
12 commissioner to the finance commission for action by the finance  
13 commission, the commissioner shall inform the finance commission  
14 of:

- 15                   (1) the result of the vote; and  
16                   (2) any additional information the commissioner deems  
17 necessary to ensure the finance commission is sufficiently notified  
18 of the advisory committee's recommendations.

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

21           (c) Each mortgage broker licensed under this chapter is  
22 responsible to the commissioner and members of the public for any  
23 act or conduct performed under this chapter and for any act or  
24 conduct performed in connection with a separate transaction that is  
25 related to the origination of a mortgage loan by the mortgage broker  
26 or a loan officer sponsored by or acting for the mortgage broker.

27           SECTION 6.05. Section 156.202, Finance Code, is amended to

1 read as follows:

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

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

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

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

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

14 (D) a mortgage banker registered under Chapter  
15 157;

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

19 (F) a Farm Credit System institution; or

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

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

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

1 (4) an individual who:

2 (A) makes a mortgage loan from the individual's  
3 own funds;

4 (B) is not an authorized lender under Chapter  
5 342, Finance Code, and;

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

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

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

13 SECTION 6.07. Section 156.204, Finance Code, is amended to  
14 read as follows:

15 Sec. 156.204. QUALIFICATIONS. (a) To be eligible to be  
16 licensed as a mortgage broker a person must:

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

18 (2) be a citizen of the United States or a lawfully  
19 admitted alien;

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

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

24 (A) the person has received a bachelor's degree  
25 in an area relating to finance, banking, or business administration  
26 from an accredited college or university and has 18 months of  
27 experience in the mortgage or lending field as evidenced by

1 documentary proof of full-time employment as a mortgage broker or  
2 loan officer with a mortgage broker or a person exempt under Section  
3 156.202;

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

5 (i) an active real estate broker under  
6 Chapter 1101, Occupations Code;

7 (ii) an active attorney; or

8 (iii) a local recording agent or insurance  
9 solicitor or agent for a legal reserve life insurance company under  
10 Chapter 21, Insurance Code, or holds an equivalent license under  
11 Chapter 21, Insurance Code; or

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

16 (5) demonstrate evidence of compliance with the  
17 financial requirements of this chapter;

18 (6) [~~(5)~~] provide the commissioner with satisfactory  
19 evidence of [~~(A)~~] having passed an examination, offered by a  
20 testing service or company approved by the finance commission, that  
21 demonstrates knowledge of [~~(i)~~] the mortgage industry[~~+~~] and  
22 [~~(ii)~~] the role and responsibilities of a mortgage broker; [~~and (B)~~]  
23 ~~compliance with the financial requirements of this chapter, and]~~

24 (7) [~~(6)~~] not have been convicted of a criminal  
25 offense that the commissioner determines directly relates to the  
26 occupation of a mortgage broker under Chapter 53, Occupations Code;  
27 [~~(6) not have been convicted of a criminal offense that the~~



1 ~~commissioner determines directly relates to the occupation of a~~  
2 ~~mortgage broker as provided by Chapter 53, Occupations Code,]~~

3       (8) [~~(7)~~] satisfy the commissioner as to the  
4 individual's good moral character, including the individual's  
5 honesty, trustworthiness, and integrity; and

6       (9) [~~(8)~~] not be in violation of this chapter, a rule  
7 adopted under this chapter, or any order previously issued to the  
8 individual by the commissioner.

9       (b) A mortgage broker may conduct business under a corporate  
10 structure, partnership, or any other business form or as an  
11 independent contractor for a corporation, partnership, or any other  
12 business entity. Before conducting mortgage broker activities  
13 under, through, or for a corporation, partnership, or other  
14 business entity, a mortgage broker must notify the commissioner, in  
15 writing, of any corporate name, partnership name, assumed name, or  
16 any other name under, through, or for which the mortgage broker  
17 conducts activities for which a license is required under this  
18 chapter. The corporation, partnership, or other business entity  
19 under, through, or for which the mortgage broker conducts business  
20 is not required to be separately licensed as a mortgage broker  
21 provided that all individuals who perform mortgage broker  
22 activities are licensed as mortgage brokers or loan officers. The  
23 commission shall require proof of compliance with this subsection  
24 at the time the mortgage broker applies for and renews a license.

25       (c) To be eligible to be licensed as a loan officer a person  
26 must:

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

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

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

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

7                   (A) the person meets one of the requirements  
8 described by subsection (a)(4);

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

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

16                   (D) for applications received prior to January 1,  
17 2000, the mortgage broker that will sponsor the applicant provides  
18 a certification under oath that the applicant has been provided  
19 necessary and appropriate education and training regarding all  
20 applicable state and federal law and regulations relating to  
21 mortgage loans;

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

25           ~~[(5) not have been convicted of a criminal offense~~  
26 ~~that the commissioner determines directly relates to the occupation~~  
27 ~~of a loan officer as provided by Chapter 53, Occupations Code, and]~~

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

4           (7) ~~[(6)]~~ provide the commissioner with satisfactory  
5 evidence of having passed an examination, offered by a testing  
6 service or company approved by the finance commission, that  
7 demonstrates knowledge of ~~[(A)]~~ the mortgage industry~~[(A)]~~ and  
8 ~~[(B)]~~ the role and responsibilities of a loan officer; and

9           (8) ~~[(7)]~~ not be in violation of this chapter, a rule  
10 adopted under this chapter, or any order previously issued to the  
11 individual by the commissioner.

12           (d) For the purposes of Subsections (a) (7) ~~[(6)]~~ and (c) (5),  
13 a person is considered convicted if a sentence is imposed on the  
14 person, the person receives community supervision, including  
15 deferred adjudication community supervision, or the court defers  
16 final disposition of the person's case.

17           SECTION 6.08. Section 156.205, Finance Code, is amended to  
18 read as follows:

19           Sec. 156.205. FINANCIAL REQUIREMENTS FOR A MORTGAGE BROKER.

20           (a) A mortgage broker must furnish to the commissioner a surety  
21 bond in an amount of not less than \$50,000. ~~[In this section, "net~~  
22 ~~assets" means the difference between total assets and total~~  
23 ~~liabilities, as determined by generally accepted accounting~~  
24 ~~principles.]~~

25           (b) ~~[A mortgage broker must maintain net assets of at least~~  
26 ~~\$25,000 or a surety bond in the amount of at least \$50,000.]~~ The  
27 term of the surety bond must coincide with the term of the license.

1 The commission may adopt rules establishing the terms and  
2 conditions of the surety bond and the qualifications of the surety.

3 (c) The commissioner shall require proof of compliance with  
4 this section at the time the mortgage broker applies for or renews a  
5 license.

6 SECTION 6.09. Section 156.208, Finance Code, is amended by  
7 amending Subsection (e) and adding new Subsection (i) to read as  
8 follows:

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

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

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

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

20 SECTION 6.10. Section 156.2081, Finance Code, is amended to  
21 read as follows:

22 Sec. 156.2081. RENEWAL AFTER EXPIRATION; NOTICE. (a) A  
23 person whose license has expired may not engage in activities that  
24 require a license until the license has been renewed.

25 (b) A person whose license has been expired for 90 days or  
26 less but who is otherwise eligible to renew a license may renew the  
27 license by paying to the commissioner a renewal fee that is equal to

1 1-1/2 times the normally required renewal fee.

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

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

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

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

24 SECTION 6.11. Section 156.209, Finance Code, is amended by  
25 amending Subsection (c) and adding new Subsections (f) and (g) to  
26 read as follows:

27 (c) The designated hearings officer shall set the time and

1 place for a hearing requested under Subsection (b) not later than  
2 the 90th [~~30th~~] day after the date on which the appeal is received.  
3 The hearings officer shall provide at least 10 days' notice of the  
4 hearing to the applicant or person requesting the renewal. The time  
5 of the hearing may be continued periodically with the consent of the  
6 applicant or person requesting the renewal. After the hearing, the  
7 commissioner shall enter an order from the findings of fact,  
8 conclusions of law, and recommendations of the hearing officer.

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

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

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

26 (c) A fee under this section is not refundable and may not be  
27 credited or applied to any other fee or indebtedness owed by the

1 person paying the fee.

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

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

6 SECTION 6.14. Chapter 156, Finance Code, is amended by  
7 adding new Section 156.3011 to read as follows:

8 Sec. 156.3011. ISSUANCE AND ENFORCEMENT OF SUBPOENAS. (a)

9 During an investigation, the commissioner may issue a subpoena that  
10 is addressed to a peace officer of this state or other person  
11 authorized by law to serve citation or perfect service. The  
12 subpoena may require a person to give a deposition or produce  
13 documents or both.

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

23 SECTION 6.15. Section 156.303(a), Finance Code, is amended  
24 by amending paragraphs (1) and (4) as follows:

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

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

3 (4) entered a plea of guilty or nolo contendere to, or  
4 is convicted of, a criminal offense which is a felony or which  
5 involves fraud or moral turpitude in a court of this or another  
6 state or in a federal court. For purposes of this Subsection, a  
7 person is considered convicted if a sentence is imposed on the  
8 person, the person receives community supervision, including  
9 deferred adjudication community supervision, or the court defers  
10 final disposition of the person's case. [~~failed to notify the~~  
11 ~~commissioner not later than the 30th day after the date of the final~~  
12 ~~conviction if the person, in a court of this or another state or in a~~  
13 ~~federal court, has been convicted of or entered a plea of guilty or~~  
14 ~~nolo contendere to a felony or a criminal offense involving fraud.]~~

15 SECTION 6.16. Section 156.303, Finance Code, is amended by  
16 adding new Subsections (f), (g), and (h) to read as follows:

17 (f) If a person fails to pay an administrative penalty which  
18 has become final or fails to comply with an order of the  
19 commissioner which has become final, then in addition to any other  
20 remedy provided under law, and cumulative of any remedy provided by  
21 this Chapter, the commissioner upon not less than 10 days notice to  
22 the person may without a prior hearing suspend the person's  
23 mortgage broker license or loan officer license. The suspension  
24 shall continue until the person has complied with the cease and  
25 desist order or paid the administrative penalty. During the period  
26 of suspension, the person shall not be eligible to originate a  
27 mortgage loan, and all compensation received by the person during



1 the period of suspension shall be subject to forfeiture as provided  
2 by Section 156.406(b).

3 (g) An order of suspension under Subsection (f) may be  
4 appealed. An appeal shall be a contested case governed by Chapter  
5 2001, Government Code. A hearing of an appeal of an order of  
6 suspension issued under Subsection (f) shall be held not later than  
7 15 days following the receipt of the notice of appeal. The  
8 appellant shall be provided at least three days' notice of the time  
9 and place of the hearing.

10 (h) An order revoking the license of a mortgage broker or  
11 loan officer may provide that the person is prohibited, without  
12 obtaining prior written consent of the commissioner, from:

13 (1) engaging in the business of originating or making  
14 of mortgage loans;

15 (2) being an employee, officer, director, manager,  
16 shareholder, member, agent, contractor, or processor of a mortgage  
17 broker or loan officer; or

18 (3) otherwise affiliating with a person for the  
19 purpose of engaging in the business of originating or making  
20 mortgage loans.

21 SECTION 6.17. Chapter 156, Finance Code, is amended by  
22 adding new Section 156.305 to read as follows:

23 Sec. 156.305. RESTITUTION. The commissioner may order a  
24 person to make restitution for any amount received by that person in  
25 violation of this chapter. A mortgage broker may be required to  
26 make restitution for any amount received by a sponsored loan  
27 officer in violation of this chapter.

1 SECTION 6.18. Section 156.406(c), Finance Code, is amended  
2 to read as follows:

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

24 SECTION 6.19. Section 156.501(b), Finance Code, is amended  
25 to read as follows:

26 (b) The fund shall be used to reimburse aggrieved persons to  
27 whom a court awards actual damages because of certain acts

1 committed by a mortgage broker or loan officer who was licensed  
2 under this chapter when the act was committed. The use of the fund  
3 is limited to an act that constitutes a violation of Section  
4 156.303(a)(2), (3), (5), (6), (8), (9), (10), (11), (12), (13), or  
5 (16) or 156.304. Payments from the fund may not be made to a lender  
6 who makes a mortgage loan originated by the mortgage broker or loan  
7 officer or who acquires a mortgage loan originated by the mortgage  
8 broker or loan officer.

9 ARTICLE 7. MISCELLANEOUS PROVISIONS

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

12 (c) The postjudgment interest rate is:

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

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

20 (3) 15 percent a year if the prime rate as published by  
21 the Board of Governors of the Federal Reserve System [~~Federal~~  
22 ~~Reserve Bank of New York~~] described by Subdivision (1) is more than  
23 15 percent.

24 Section 7.02. REPORT TO THE LEGISLATURE. No later than  
25 December 31, 2006, the finance commission and the credit union  
26 department shall:

27 (1) compare state laws related to financial

1 institutions with applicable federal laws;

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

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

6 (4) report their findings to the legislature, with  
7 recommended statutory changes..

8 SECTION 7.03. REPEALERS. Sections 96.052, 345.151,  
9 345.152, and 345.154, Finance Code, are repealed.

10 ARTICLE 8. EFFECTIVE DATE

11 SECTION 8.01. This Act takes effect September 1, 2005.