

1-1 By: Solomons (Senate Sponsor - Averitt) H.B. No. 955  
1-2 (In the Senate - Received from the House May 11, 2005;  
1-3 May 13, 2005, read first time and referred to Committee on Business  
1-4 and Commerce; May 21, 2005, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;  
1-6 May 21, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 955 By: Averitt

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the regulation of financial businesses and practices;  
1-11 providing civil penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 ARTICLE 1. CONSUMER PROTECTION

1-14 SECTION 1.01. Subtitle A, Title 4, Finance Code, is amended  
1-15 by adding Chapter 308 to read as follows:

1-16 CHAPTER 308. CONSUMER CREDIT PROTECTIONS

1-17 Sec. 308.001. APPLICABILITY. This chapter applies to a  
1-18 person regularly engaged in the business of extending credit under  
1-19 this subtitle primarily for personal, family, or household use and  
1-20 not for a business, commercial, investment, or agricultural  
1-21 purpose. This chapter does not apply to a transaction primarily for  
1-22 a business, commercial, investment, or agricultural purpose.

1-23 Sec. 308.002. FALSE, MISLEADING, OR DECEPTIVE ADVERTISING.

1-24 (a) A creditor may not, in any manner, advertise or cause to be  
1-25 advertised a false, misleading, or deceptive statement or  
1-26 representation relating to a rate, term, or condition of a credit  
1-27 transaction or advertise credit terms that the person does not  
1-28 intend to offer to consumers who qualify for those terms.

1-29 (b) This section does not create a private right of action.

1-30 (c) In interpreting this section, an administrative agency  
1-31 or a court shall be guided by the applicable advertising provisions  
1-32 of:

1-33 (1) Part C of 15 U.S.C. Chapter 41 Subchapter I (15  
1-34 U.S.C. Section 1601 et seq.);

1-35 (2) 12 C.F.R. Part 226.1 et seq. adopted by the Board  
1-36 of Governors of the Federal Reserve System; and

1-37 (3) the Official Staff Commentary and other  
1-38 interpretations of that statute and regulation by the Board of  
1-39 Governors of the Federal Reserve System and its staff.

1-40 (d) If a requirement of this section and a requirement of a  
1-41 federal law, including a regulation or an interpretation of federal  
1-42 law, are inconsistent or in conflict, federal law controls and the  
1-43 inconsistent or conflicting requirements of this chapter do not  
1-44 apply.

1-45 (e) A creditor who complies with the Truth in Lending Act  
1-46 (15 U.S.C. Section 1601 et seq.) and Federal Reserve Regulation Z  
1-47 (12 C.F.R. Part 226) in advertising a credit transaction is  
1-48 considered to have fully complied with this section.

1-49 Sec. 308.003. NO DOUBLE LIABILITY OR ENFORCEMENT FOR SAME  
1-50 ACT OR PRACTICE. A judgment, consent decree, assurance of  
1-51 compliance, or other resolution of a claimed violation asserted by  
1-52 a federal agency under the Consumer Credit Protection Act (15  
1-53 U.S.C. Section 1601 et seq.) bars a subsequent action or other  
1-54 enforcement under this chapter with respect to the same act or  
1-55 practice.

1-56 SECTION 1.02. Section 341.402(c), Finance Code, is amended  
1-57 to read as follows:

1-58 (c) In addition to the other liabilities prescribed by this  
1-59 section, a person holding a license issued under this subtitle  
1-60 [that is held by a person] who violates Section 341.401 is subject  
1-61 to revocation or suspension of the license or the assessment of  
1-62 civil penalties by the commissioner.

1-63 SECTION 1.03. Section 341.403(a), Finance Code, is amended

2-1 to read as follows:

2-2 (a) A person may not, in any manner, advertise or cause to be  
2-3 advertised a false, misleading, or deceptive statement or  
2-4 representation relating to a rate, term, or condition of a credit  
2-5 transaction, including a loan, regulated under this subtitle,  
2-6 Subtitle C, or Chapter 394, or advertise credit terms that the  
2-7 person does not intend to offer to consumers who qualify for those  
2-8 terms.

2-9 SECTION 1.04. Subtitle B, Title 4, Finance Code, is amended  
2-10 by adding Chapter 350 to read as follows:

2-11 CHAPTER 350. REQUIREMENTS AND LIMITATIONS APPLICABLE TO CONSUMER  
2-12 CREDITORS NOT LICENSED OR REGISTERED UNDER THIS TITLE

2-13 Sec. 350.001. APPLICABILITY. (a) This chapter applies to  
2-14 a person who extends credit primarily for personal, family, or  
2-15 household use and not for a business, commercial, investment, or  
2-16 agricultural purpose. For the purposes of this chapter, credit  
2-17 means the right granted to a debtor to defer payment of debt or to  
2-18 incur debt and defer its payment. A creditor is subject to this  
2-19 chapter if the creditor charges a finance charge or extends credit  
2-20 payable in one or more installments.

2-21 (b) This chapter does not apply to a person who is:

2-22 (1) licensed or registered under Title 3 or 4; or

2-23 (2) exempt from licensing or registration under this  
2-24 title.

2-25 Sec. 350.002. PREVENTION OF EVASION. A person may not use  
2-26 any device, subterfuge, or pretense to evade the application of  
2-27 this section.

2-28 Sec. 350.003. COMPLIANCE WITH FAIR TRADE PRACTICES ACT. A  
2-29 creditor who is not licensed, registered, or otherwise exempt under  
2-30 this title must comply with the requirements of 15 U.S.C. Section  
2-31 45. An enforcement action to compel compliance under this section  
2-32 may include an action to enjoin illegal activities or order  
2-33 restitution.

2-34 Sec. 350.004. PENALTIES. Chapter 349 applies to violations  
2-35 of this chapter and the rules adopted under this chapter.

2-36 ARTICLE 2. USURY REFORM

2-37 SECTION 2.01. Section 301.002(4), Finance Code, is amended  
2-38 to read as follows:

2-39 (4) "Interest" means compensation for the use,  
2-40 forbearance, or detention of money. The term does not include time  
2-41 price differential, regardless of how it is denominated. The term  
2-42 does not include compensation or other amounts that are determined  
2-43 or stated by this code or other applicable law not to constitute  
2-44 interest or that are permitted to be contracted for, charged, or  
2-45 received in addition to interest in connection with an extension of  
2-46 credit.

2-47 SECTION 2.02. Sections 303.009(a)-(d), Finance Code, are  
2-48 amended to read as follows:

2-49 (a) If [Except as provided by Subsection (c), if] the rate  
2-50 computed for the weekly, monthly, quarterly, or annualized ceiling  
2-51 is less than 18 percent a year, the ceiling is 18 percent a year.

2-52 (b) Except as provided by Subsection (c), [(d), or (e)], if  
2-53 the rate computed for the weekly, monthly, quarterly, or annualized  
2-54 ceiling is more than 24 percent a year, the ceiling is 24 percent a  
2-55 year.

2-56 (c) For a contract made, extended, or renewed under which  
2-57 credit is extended for a business, commercial, investment, or  
2-58 similar purpose, [and the amount of the credit extension is  
2-59 \$250,000 or more, the 24-percent limitation on the ceilings in  
2-60 Subsection (b) does not apply, and] the limitation on the ceilings  
2-61 determined by those computations is 28 percent a year.

2-62 (d) For an open-end account credit agreement that provides  
2-63 for credit card transactions on which a merchant discount is not  
2-64 imposed or received by the creditor, [if the rate computed for the  
2-65 weekly ceiling, monthly ceiling, quarterly ceiling, or annualized  
2-66 ceiling is more than 21 percent a year,] the ceiling is 21 percent a  
2-67 year.

2-68 SECTION 2.03. Subchapter A, Chapter 303, Finance Code, is  
2-69 amended by adding Section 303.017 to read as follows:

3-1           Sec. 303.017. VARIOUS CHARGES ON CONSUMER LOANS MADE BY  
 3-2 PARTICULAR LENDERS. Notwithstanding Section 342.005, a bank,  
 3-3 savings association, savings bank, or credit union making a loan  
 3-4 primarily for personal, family, or household use under authority of  
 3-5 this chapter may charge all reasonable expenses and fees incurred  
 3-6 in connection with making, closing, disbursing, extending,  
 3-7 readjusting, or renewing a loan not secured by real property,  
 3-8 whether or not those expenses or fees are paid to third parties.  
 3-9 Those reasonable expenses and fees paid to third parties are not  
 3-10 interest.

3-11           SECTION 2.04. Section 303.201, Finance Code, is amended to  
 3-12 read as follows:

3-13           Sec. 303.201. LICENSE REQUIRED. A person engaged in the  
 3-14 business of making loans for personal, family, or household use for  
 3-15 which the rate is authorized under this chapter must obtain a  
 3-16 license under Chapter 342 unless the person is not required to  
 3-17 obtain a license under Section 342.051.

3-18           SECTION 2.05. Section 305.001, Finance Code, is amended by  
 3-19 amending Subsection (a) and adding Subsection (a-1) to read as  
 3-20 follows:

3-21           (a) A creditor who contracts for, charges, or receives  
 3-22 interest that is greater than the amount authorized by this  
 3-23 subtitle in connection with a transaction for personal, family, or  
 3-24 household use is liable to the obligor for an amount that is equal  
 3-25 to the greater of:

3-26           (1) three times the amount computed by subtracting the  
 3-27 amount of interest allowed by law from the total amount of interest  
 3-28 contracted for, charged, or received; or

3-29           (2) \$2,000 or 20 percent of the amount of the  
 3-30 principal, whichever is less.

3-31           (a-1) A creditor who contracts for or receives interest that  
 3-32 is greater than the amount authorized by this subtitle in  
 3-33 connection with a commercial transaction is liable to the obligor  
 3-34 for an amount that is equal to three times the amount computed by  
 3-35 subtracting the amount of interest allowed by law from the total  
 3-36 amount of interest contracted for or received.

3-37           SECTION 2.06. Section 305.002(b), Finance Code, is amended  
 3-38 to read as follows:

3-39           (b) This section applies only to a contract or transaction  
 3-40 for personal, family, or household use subject to this subtitle.

3-41           SECTION 2.07. Sections 305.006(b) and (d), Finance Code,  
 3-42 are amended to read as follows:

3-43           (b) Not later than the 61st day before the date an obligor  
 3-44 files a suit seeking penalties for a transaction in which a creditor  
 3-45 has contracted for, ~~or~~ charged, or received usurious interest,  
 3-46 the obligor shall give the creditor written notice stating in  
 3-47 reasonable detail the nature and amount of the violation.

3-48           (d) With respect to ~~[The notice requirement of Subsection~~  
 3-49 ~~(b) does not apply to]~~ a defendant filing a counterclaim action  
 3-50 alleging usurious interest in an original action by the creditor,  
 3-51 the defendant shall provide notice complying with Subsection (b) at  
 3-52 the time of filing the counterclaim and, on application of the  
 3-53 creditor to the court, the action is subject to abatement for a  
 3-54 period of 60 days from the date of the court order. During the  
 3-55 abatement period the creditor may correct a violation. As part of  
 3-56 the correction of the violation, the creditor shall offer to pay the  
 3-57 obligor's reasonable attorney's fees as determined by the court  
 3-58 based on the hours reasonably expended by the obligor's counsel  
 3-59 with regard to the alleged violation before the abatement. A  
 3-60 creditor who corrects a violation as provided by this subsection is  
 3-61 not liable to an obligor for the violation.

3-62           SECTION 2.08. Sections 306.001(2) and (8), Finance Code,  
 3-63 are amended to read as follows:

3-64           (2) "Affiliate of an obligor" means a person who  
 3-65 directly or indirectly, or through one or more intermediaries or  
 3-66 other entities, owns an interest in, controls, is controlled by, or  
 3-67 is under common control with the obligor, or a person in which the  
 3-68 obligor directly or indirectly, or through one or more  
 3-69 intermediaries or other entities, owns an interest. In this

4-1 subdivision "control" means the possession, directly or  
 4-2 indirectly, or with one or more other persons, of the power to  
 4-3 direct or cause the direction of the management and policies of a  
 4-4 person, whether through the ownership of voting securities, by  
 4-5 contract, or otherwise.

4-6 (8) "Prepayment premium [penalty]" means compensation  
 4-7 paid by or that is or will become due from an obligor to a creditor  
 4-8 solely as a result or condition of the payment or maturity of all or  
 4-9 a portion of the principal amount of a loan before its stated  
 4-10 maturity or a regularly scheduled date of payment, as a result of  
 4-11 the obligor's election to pay all or a portion of the principal  
 4-12 amount before its stated maturity or a regularly scheduled date of  
 4-13 payment.

4-14 SECTION 2.09. Section 306.001, Finance Code, is amended by  
 4-15 adding Subdivision (5-a) and amending Subdivision (9) to read as  
 4-16 follows:

4-17 (5-a) "Exempt commercial loan" means a commercial loan  
 4-18 in which one or more persons as part of the same transaction lends,  
 4-19 advances, borrows, or receives, or is obligated to lend or advance  
 4-20 or entitled to borrow or receive, money or credit with an aggregate  
 4-21 value of:

4-22 (A) \$7 million or more if the commercial loan is  
 4-23 primarily secured by real property; or

4-24 (B) \$500,000 or more if the commercial loan is  
 4-25 not primarily secured by real property.

4-26 (9) "Qualified commercial loan":

4-27 (A) means:

4-28 (i) a commercial loan in which one or more  
 4-29 persons as part of the same transaction lends, advances, borrows,  
 4-30 or receives, or is obligated to lend or advance or entitled to  
 4-31 borrow or receive, money or credit with an aggregate value of:

4-32 (a) \$1 [~~\$3~~] million or more but less  
 4-33 than \$7 million if the commercial loan is primarily secured by real  
 4-34 property; or

4-35 (b) \$100,000 [~~\$250,000]~~ or more but  
 4-36 less than \$500,000 if the commercial loan is not primarily secured  
 4-37 by real property and [~~if the aggregate value of the commercial loan~~  
 4-38 ~~is less than \$500,000,~~] the loan documents contain a written  
 4-39 certification from the borrower that:

4-40 (1) the borrower has been  
 4-41 advised by the lender to seek the advice of an attorney and an  
 4-42 accountant in connection with the commercial loan; and

4-43 (2) the borrower has had the  
 4-44 opportunity to seek the advice of an attorney and accountant of the  
 4-45 borrower's choice in connection with the commercial loan; and

4-46 (ii) a renewal or extension of a commercial  
 4-47 loan described by this paragraph [~~Paragraph (A)~~], regardless of the  
 4-48 principal amount of the loan at the time of the renewal or  
 4-49 extension; and

4-50 (B) does not include a commercial loan made for  
 4-51 the purpose of financing a business licensed by the Motor Vehicle  
 4-52 Board of the Texas Department of Transportation under Section  
 4-53 2301.251(a), Occupations Code.

4-54 SECTION 2.10. Section 306.002, Finance Code, is amended by  
 4-55 amending Subsection (a) and adding Subsection (c) to read as  
 4-56 follows:

4-57 (a) Except as provided by Section 306.1015, a [A] creditor  
 4-58 may contract for, charge, and receive from an obligor on a  
 4-59 commercial loan a rate or amount of interest that does not exceed  
 4-60 the applicable ceilings computed in accordance with Chapter 303.

4-61 (c) The provisions of this chapter do not affect  
 4-62 transactions that are not subject to this chapter nor affect or  
 4-63 negatively impact any rule of law applicable to transactions not  
 4-64 subject to this chapter.

4-65 SECTION 2.11. Subchapter B, Chapter 306, Finance Code, is  
 4-66 amended by adding Section 306.1015 to read as follows:

4-67 Sec. 306.1015. EXEMPT COMMERCIAL LOAN--RATE CEILINGS  
 4-68 INAPPLICABLE. (a) The parties to an exempt commercial loan  
 4-69 agreement may contract for, charge, and receive any rate or amount

5-1 of interest to which the parties agree, however computed.

5-2 (b) A rate ceiling provided by this title or another law of  
5-3 this state does not apply to an exempt commercial loan.

5-4 SECTION 2.12. Section 306.005, Finance Code, is amended to  
5-5 read as follows:

5-6 Sec. 306.005. PREPAYMENT PREMIUMS AND SIMILAR AMOUNTS  
5-7 [PENALTY]. With respect to a loan subject to this chapter, a [A]  
5-8 creditor and an obligor may agree to a prepayment premium,  
5-9 make-whole premium, or similar fee or charge, whether payable in  
5-10 the event of voluntary prepayment, involuntary prepayment,  
5-11 acceleration of maturity, or other cause that involves premature  
5-12 termination of the loan, and those amounts do not constitute  
5-13 interest [penalty in a loan subject to this chapter. A prepayment  
5-14 penalty is not interest].

5-15 SECTION 2.13. Section 306.006, Finance Code, is amended to  
5-16 read as follows:

5-17 Sec. 306.006. CERTAIN AUTHORIZED CHARGES ON COMMERCIAL  
5-18 LOANS. In addition to the interest authorized by this chapter, the  
5-19 parties to a commercial loan may agree and stipulate for:

5-20 (1) a delinquency charge on the amount of any  
5-21 installment or other amount in default for a period of not less than  
5-22 10 days in an [a reasonable] amount not to exceed five percent of  
5-23 the total amount of the installment; and

5-24 (2) a returned check fee in an amount that does not  
5-25 [to] exceed the maximum fee authorized in Section 3.506, Business &  
5-26 Commerce Code, [\$25] on any check, draft, order, or other  
5-27 instrument or form of remittance that is returned unpaid or  
5-28 dishonored for any reason.

5-29 SECTION 2.14. Subchapter A, Chapter 306, Finance Code, is  
5-30 amended by adding Section 306.007 to read as follows:

5-31 Sec. 306.007. GUARANTY, ASSUMPTION, PAYMENT, OR OTHER  
5-32 AGREEMENT. With respect to a commercial loan, an obligor may be  
5-33 required to assume, pay, or provide a guaranty of another person's  
5-34 existing or future obligation as a condition of the obligor's own  
5-35 use, forbearance, or detention of money. The amount of the other  
5-36 person's obligation required to be assumed, paid, or guaranteed  
5-37 does not constitute interest with respect to any obligation of the  
5-38 obligor.

5-39 SECTION 2.15. Section 339.001, Finance Code, is amended by  
5-40 adding Subsection (c) to read as follows:

5-41 (c) The Finance Commission of Texas shall have exclusive  
5-42 jurisdiction to enforce and adopt rules relating to this section.  
5-43 Rules adopted pursuant to this section shall be consistent with  
5-44 federal laws and regulations governing credit card transactions  
5-45 described by this section. This section does not create a cause of  
5-46 action against an individual for violation of this section.

5-47 SECTION 2.16. Section 345.104(a), Finance Code, is amended  
5-48 to read as follows:

5-49 (a) As an alternative to the maximum rate or amount  
5-50 authorized for a time price differential under Section 345.103, a  
5-51 retail charge agreement may provide for a rate or amount of time  
5-52 price differential that does not exceed[+]

5-53 [(-)] the rate or amount authorized by Chapter 303[+]  
5-54 or

5-55 [(-) the rate or amount of the applicable market  
5-56 competitive rate ceiling published under Subchapter D].

5-57 SECTION 2.17. Section 346.004, Finance Code, is amended to  
5-58 read as follows:

5-59 Sec. 346.004. APPLICATION OF CHAPTER TO REVOLVING CREDIT  
5-60 ACCOUNTS. (a) Unless the contract for the account provides  
5-61 otherwise, this chapter applies to a revolving credit account  
5-62 described by Section 346.003 if the loan or extension of credit is  
5-63 primarily for personal, family, or household use.

5-64 (b) Unless the contract for the account provides that this  
5-65 chapter applies [otherwise], this chapter does not apply [applies]  
5-66 to a revolving credit account described by Section 346.003 if  
5-67 [regardless of whether] the loan or extension of credit is for  
5-68 [consumer or] business, commercial, investment, or similar  
5-69 purposes.

SECTION 2.18. Subchapter A, Chapter 347, Finance Code, is amended by adding Section 347.007 to read as follows:

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

SECTION 2.19. Section 348.001, Finance Code, is amended by amending Subdivision (4) and adding Subdivisions (3-a) and (10-a) to read as follows:

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

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

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

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

(ii) a gas or electric refrigerator;

(iii) a toilet with exterior evacuation;

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

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

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

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

(A) a boat trailer;

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

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

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

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

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

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

(C) is permanently built on a single chassis;

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

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

SECTION 2.20. Section 348.007, Finance Code, is amended by adding Subsection (a-1) to read as follows:

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

SECTION 2.21. Section 342.308(a), Finance Code, is amended to read as follows:

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

(1) reasonable fees for:

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

7-1 (i) an attorney who is not an employee of  
7-2 the lender; or

7-3 (ii) a title company or property search  
7-4 company authorized to do business in this state; or

7-5 (B) premiums or fees for title insurance or title  
7-6 search for the benefit of the mortgagee and, at the mortgagor's  
7-7 option, for title insurance or title search for the benefit of the  
7-8 mortgagor;

7-9 (2) reasonable fees charged to the lender by an  
7-10 attorney who is not a salaried employee of the lender for  
7-11 preparation of the loan documents in connection with the mortgage  
7-12 loan if the fees are evidenced by a statement for services rendered;

7-13 (3) charges prescribed by law that are paid to public  
7-14 officials for determining the existence of a security interest or  
7-15 for perfecting, releasing, or satisfying a security interest;

7-16 (4) reasonable fees for an appraisal of real property  
7-17 offered as security for the loan prepared by an [~~a licensed or~~  
7-18 ~~certified~~] appraiser who is not a salaried employee of the lender;

7-19 (5) the reasonable cost of a credit report;

7-20 (6) reasonable fees for a survey of real property  
7-21 offered as security for the loan prepared by a registered surveyor  
7-22 who is not a salaried employee of the lender;

7-23 (7) the premiums received in connection with the sale  
7-24 of credit life insurance, credit accident and health insurance, or  
7-25 other insurance that protects the mortgagee against default by the  
7-26 mortgagor, the benefits of which are applied in whole or in part to  
7-27 reduce or extinguish the loan balance; or

7-28 (8) reasonable fees relating to real property offered  
7-29 as security for the loan that are incurred to comply with a  
7-30 federally mandated program if the collection of the fees or the  
7-31 participation in the program is required by a federal agency; and

7-32 (9) an administrative fee, subject to Subsection (c),  
7-33 in an amount not to exceed \$25 for a loan of more than \$1,000 or \$20  
7-34 for a loan of \$1,000 or less.

7-35 SECTION 2.22. Section 342.251, Finance Code, is amended to  
7-36 read as follows:

7-37 Sec. 342.251. MAXIMUM CASH ADVANCE. The maximum cash  
7-38 advance of a loan made under this subchapter is an amount computed  
7-39 under Subchapter C, Chapter 341, using the reference base amount of  
7-40 \$100, except that for loans that are subject to Section 342.259 the  
7-41 reference base amount is \$200.

7-42 SECTION 2.23. Section 342.257, Finance Code, is amended to  
7-43 read as follows:

7-44 Sec. 342.257. DEFAULT CHARGE; DEFERMENT OF PAYMENT. The  
7-45 provisions of Subchapter E relating to additional interest for  
7-46 default and additional interest for the deferment of installments  
7-47 apply to a loan made under this subchapter. Provided, that on a  
7-48 loan contract in which the cash advance is \$100 or more, instead of  
7-49 additional interest for default under Subchapter E, the contract  
7-50 may provide for a delinquency charge if any part of an installment  
7-51 remains unpaid after the 10th day after the date on which the  
7-52 installment is due, including Sundays and holidays. The  
7-53 delinquency charge on a loan with a cash advance of \$100 or more may  
7-54 not exceed the greater of \$10 or five cents for each \$1 of the  
7-55 delinquent installment.

7-56 SECTION 2.24. Subchapter F, Chapter 342, Finance Code, is  
7-57 amended by adding Section 342.259 to read as follows:

7-58 Sec. 342.259. LOANS WITH LARGER ADVANCES. (a) Instead of  
7-59 the charges authorized by Sections 342.201 and 342.252, a loan made  
7-60 under this subchapter with a maximum cash advance computed under  
7-61 Subchapter C, Chapter 341, using a reference base amount that is  
7-62 more than \$100 but not more than \$200, may provide for:

7-63 (1) an acquisition charge that is not more than \$10;  
7-64 and

7-65 (2) an installment account handling charge that is not  
7-66 more than the ratio of \$4 a month for each \$100 of cash advance.

7-67 (b) An acquisition charge under this section is considered  
7-68 to be earned at the time a loan is made and is not subject to refund.  
7-69 On the prepayment of a loan that is subject to this section, the

8-1 installment account handling charge is subject to refund in  
 8-2 accordance with Subchapter H.

8-3 (c) Except as provided by this section, provisions of this  
 8-4 chapter applicable to a loan that is subject to Section 342.252 also  
 8-5 apply to a loan that is subject to this section.

8-6 ARTICLE 3. TEXAS SAVINGS AND MORTGAGE LENDING DEPARTMENT

8-7 SECTION 3.01. The legislature finds that:

8-8 (1) the Savings and Loan Department regulates  
 8-9 state-chartered savings and loan institutions, savings banks,  
 8-10 licensed mortgage brokers, and loan officers and registers mortgage  
 8-11 bankers;

8-12 (2) there is one state-chartered savings and loan  
 8-13 institution that has not converted to a state-chartered savings  
 8-14 bank or other form of institution; and

8-15 (3) the department's name no longer fits the  
 8-16 activities and regulatory responsibilities of the department, and  
 8-17 does not provide sufficient clarity of its functions to the public.

8-18 SECTION 3.02. Chapter 13, Finance Code, is amended by  
 8-19 adding Section 13.0015 to read as follows:

8-20 Sec. 13.0015. NAME CHANGES. (a) The Savings and Loan  
 8-21 Department is renamed the Department of Savings and Mortgage  
 8-22 Lending and the savings and loan commissioner is renamed the  
 8-23 savings and mortgage lending commissioner.

8-24 (b) A reference in a statute or rule to the Savings and Loan  
 8-25 Department means the Department of Savings and Mortgage Lending.

8-26 (c) A reference in a statute or rule to the savings and loan  
 8-27 commissioner means the savings and mortgage lending commissioner.

8-28 SECTION 3.03. Section 13.008(a), Finance Code, is amended  
 8-29 to read as follows:

8-30 (a) The finance commission shall establish reasonable and  
 8-31 necessary fees for the administration of Subtitles B and C, Title 3,  
 8-32 and Chapters 156 and 157, and for the support of the finance  
 8-33 commission as provided by Subchapter C, Chapter 11. In  
 8-34 establishing the reasonable and necessary fees for the  
 8-35 administration of Chapters 156 and 157, the commissioner and the  
 8-36 finance commission may not exceed the limit on the fees set forth in  
 8-37 those chapters.

8-38 SECTION 3.04. Section 119.201(a), Finance Code, is amended  
 8-39 to read as follows:

8-40 (a) The commissioner may require a savings bank that  
 8-41 knowingly violates this subtitle or a rule adopted under this  
 8-42 subtitle to pay to the department [~~Savings and Loan Department~~] an  
 8-43 administrative penalty not to exceed \$10,000 [~~\$1,000~~] for each day  
 8-44 that the violation occurs after notice of the violation is given by  
 8-45 the commissioner.

8-46 SECTION 3.05. The savings and mortgage lending commissioner  
 8-47 shall study the desirability and feasibility of developing  
 8-48 alternative thrift charters, including special purpose charters,  
 8-49 and shall issue a report, including findings and legislative  
 8-50 recommendations, to the legislature not later than December 31,  
 8-51 2006.

8-52 ARTICLE 4. CONSUMER CREDIT COMMISSIONER

8-53 SECTION 4.01. Section 14.208, Finance Code, is amended to  
 8-54 read as follows:

8-55 Sec. 14.208. INJUNCTION; APPEAL. (a) If the commissioner  
 8-56 has reasonable cause to believe that a person is violating a statute  
 8-57 to which this chapter applies, the commissioner, in addition to any  
 8-58 other authorized action, may issue an order [~~the person~~] to cease  
 8-59 and desist [~~refrain~~] from the violation or an order to take  
 8-60 affirmative action, or both, to enforce compliance. A person may  
 8-61 appeal the order to the finance commission as provided by  
 8-62 Subsection (d) or directly to district court in accordance with  
 8-63 Chapter 2001, Government Code.

8-64 (b) If a person against whom an order under this section is  
 8-65 made requests a hearing not later than the 30th day after the date  
 8-66 the order is served, the commissioner shall set and give notice of a  
 8-67 hearing before a hearings officer. The hearing is governed by  
 8-68 Chapter 2001, Government Code. Based on the findings of fact,  
 8-69 conclusions of law, and recommendations of the hearings officer,

9-1 the commissioner by order may find whether a violation has  
9-2 occurred.

9-3 (c) If a hearing is not timely requested under Subsection  
9-4 (b), the order is considered final and becomes enforceable. The  
9-5 commissioner, after giving notice, may impose against a person who  
9-6 violates a cease and desist order an administrative penalty in an  
9-7 amount not to exceed \$1,000 for each day of violation. In addition  
9-8 to any other remedy provided by law, the commissioner on relation of  
9-9 the attorney general may institute in district court a suit for  
9-10 injunctive relief and to collect an administrative penalty. A bond  
9-11 is not required of the commissioner with respect to injunctive  
9-12 relief granted under this section. ~~[The commissioner, on relation~~  
9-13 ~~of the attorney general at the request of the commissioner, may also~~  
9-14 ~~bring an action in district court to enjoin the person from engaging~~  
9-15 ~~in or continuing the violation or doing an act that furthers the~~  
9-16 ~~violation.]~~ In the action, the court may enter as proper an order  
9-17 awarding a preliminary or final injunction.

9-18 (d) If a party seeks review of the order by the finance  
9-19 commission, the party shall file a petition for review with the  
9-20 finance commission not later than the 30th day after the date of the  
9-21 issuance of the commissioner's decision. The finance commission  
9-22 may affirm, vacate, or modify an order issued by the commissioner.  
9-23 A party aggrieved by a final decision of the finance commission is  
9-24 entitled to judicial review. The party may appeal the decision of  
9-25 the finance commission by the filing of a motion for rehearing with  
9-26 the finance commission and then filing a petition initiating  
9-27 judicial review.

9-28 SECTION 4.02. The heading to Subchapter F, Chapter 14,  
9-29 Finance Code, is amended to read as follows:

9-30 SUBCHAPTER F. ADMINISTRATIVE PENALTY; RESTITUTION ORDER;  
9-31 ASSURANCE OF VOLUNTARY COMPLIANCE

9-32 SECTION 4.03. Section 14.252(b), Finance Code, is amended  
9-33 to read as follows:

9-34 (b) The aggregate amount of penalties under this subchapter  
9-35 that the commissioner may assess against a person during one  
9-36 calendar year may not exceed the lesser of:

- 9-37 (1) \$100,000 ~~[\$50,000]~~; or  
9-38 (2) an amount that is equal to the greater of five  
9-39 percent of the net worth of the creditor or \$5,000 ~~[for each~~  
9-40 ~~business location at which an element of a violation occurred].~~

9-41 SECTION 4.04. Section 14.258, Finance Code, is amended to  
9-42 read as follows:

9-43 Sec. 14.258. STAY OF PENALTY; SUIT BY ATTORNEY GENERAL  
9-44 [COURT ORDERS]. (a) The enforcement of the penalty may be stayed  
9-45 during the time the order is under judicial review if the person  
9-46 pays the penalty to the clerk of the court or files a supersedeas  
9-47 bond with the court in the amount of the penalty. A person who  
9-48 cannot afford to pay the penalty or file the bond may stay the  
9-49 enforcement by filing an affidavit in the manner required by the  
9-50 Texas Rules of Civil Procedure for a party who cannot afford to file  
9-51 security for costs, subject to the right of the commissioner to  
9-52 contest the affidavit as provided by those rules.

9-53 (b) The attorney general may sue to collect the penalty.

9-54 (c) A court that sustains the occurrence of a violation may  
9-55 uphold or reduce the amount of the administrative penalty and order  
9-56 the person to pay that amount.

9-57 (d) ~~[(b)]~~ A court that does not sustain the occurrence of a  
9-58 violation shall order that no penalty is owed.

9-59 (e) ~~[(c)]~~ If a person has paid a penalty and a court in a  
9-60 final judgment reduces or does not uphold the amount, the court  
9-61 shall order that the appropriate amount plus accrued interest be  
9-62 remitted to the person. The interest rate is the rate authorized by  
9-63 Chapter 304, and interest shall be paid for the period beginning on  
9-64 the date the penalty was paid and ending on the date the penalty is  
9-65 remitted.

9-66 SECTION 4.05. Subchapter F, Chapter 14, Finance Code, is  
9-67 amended by adding Sections 14.261-14.264 to read as follows:

9-68 Sec. 14.261. ACCEPTANCE OF ASSURANCE. (a) In  
9-69 administering this chapter, the commissioner may accept assurance

10-1 of voluntary compliance from a person who is engaging in or has  
10-2 engaged in an act or practice in violation of:

- 10-3 (1) this chapter or a rule adopted under this chapter;
- 10-4 (2) Chapter 394; or
- 10-5 (3) Subtitle B, Title 4, or a rule adopted under
- 10-6 Subtitle B, Title 4.

10-7 (b) The assurance must be in writing and be filed with the  
10-8 commissioner.

10-9 (c) The commissioner may condition acceptance of an  
10-10 assurance of voluntary compliance on the stipulation that the  
10-11 person offering the assurance restore to a person in interest money  
10-12 that may have been acquired by the act or practice described by  
10-13 Subsection (a).

10-14 (d) The finance commission may adopt rules to establish the  
10-15 form of the assurance or require certain information be contained  
10-16 in an assurance.

10-17 Sec. 14.262. EFFECT OF ASSURANCE. (a) An assurance of  
10-18 voluntary compliance is not an admission of a violation of:

- 10-19 (1) this chapter or a rule adopted under this chapter;
- 10-20 (2) Chapter 394; or
- 10-21 (3) Subtitle B, Title 4, or a rule adopted under
- 10-22 Subtitle B, Title 4.

10-23 (b) Unless an assurance of voluntary compliance is  
10-24 rescinded by agreement or voided by a court for good cause, a  
10-25 subsequent failure to comply with the assurance is prima facie  
10-26 evidence of a violation of:

- 10-27 (1) this chapter or a rule adopted under this chapter;
- 10-28 (2) Chapter 394; or
- 10-29 (3) Subtitle B, Title 4, or a rule adopted under
- 10-30 Subtitle B, Title 4.

10-31 Sec. 14.263. REOPENING. A matter closed by the filing of an  
10-32 assurance of voluntary compliance may be reopened at any time.

10-33 Sec. 14.264. RIGHT TO BRING ACTION NOT AFFECTED. (a) An  
10-34 assurance of voluntary compliance does not affect the right of an  
10-35 individual to bring an action, except as provided in Chapter 349 and  
10-36 except that the right of an individual in relation to money received  
10-37 according to a stipulation under Section 14.261(c) is governed by  
10-38 the terms of the assurance.

10-39 (b) A person entering into an assurance of voluntary  
10-40 compliance may, not later than the 60th day after the date of filing  
10-41 of the assurance, correct the violation under Section 349.201.  
10-42 Amounts paid as restitution and other acts taken in accordance with  
10-43 an assurance of voluntary compliance shall be considered for  
10-44 purposes of determining whether the obligor has made a correction  
10-45 under Subchapter C, Chapter 349. With respect to corrections of  
10-46 violations or possible violations relating to matters addressed in  
10-47 the assurance of voluntary compliance, the date of filing of the  
10-48 assurance is considered to be the date of:

- 10-49 (1) actual discovery of the violation or possible
- 10-50 violation;
- 10-51 (2) written notice; and
- 10-52 (3) filing of the action alleging the violation.

10-53 SECTION 4.06. Section 371.303(b), Finance Code, is amended  
10-54 to read as follows:

10-55 (b) The commissioner may assess the administrative penalty  
10-56 in an amount [+

10-57 ~~(1) equal to the average profit made by the pawnshop~~  
10-58 ~~on a business day in the six months before the date the violation~~  
10-59 ~~occurred, not to exceed \$1,000; or~~

10-60 ~~(2) for a violation of Section 371.304,~~] not to  
10-61 exceed \$1,000.

10-62 SECTION 4.07. Subchapter B, Chapter 349, Finance Code, is  
10-63 amended by adding Section 349.103 to read as follows:

10-64 Sec. 349.103. LIMITATION ON MULTIPLE RECOVERY OF PENALTIES.

10-65 (a) An administrative penalty, fine, settlement, or assurance of  
10-66 voluntary compliance under this title or federal law that is  
10-67 assessed by or agreed to with an administrative agency or the  
10-68 attorney general shall be considered and applied as a bar or credit  
10-69 to recovery of further fines, penalties, or enhanced damages for

11-1 substantially the same act, practice, or violation in a suit or  
 11-2 other proceeding brought by a private litigant under this title,  
 11-3 the Business & Commerce Code, or other applicable law of this state.  
 11-4 This section does not apply to a claim for restitution for  
 11-5 unreimbursed actual damages.

11-6 (b) A suit or other proceeding by a private litigant does  
 11-7 not affect or restrict any state or federal agency from pursuing a  
 11-8 person for any administrative remedy, including an administrative  
 11-9 penalty. An administrative agency of this state, however, shall  
 11-10 consider as a mitigating factor any relief recovered in a private  
 11-11 suit or proceeding when the agency determines an administrative  
 11-12 remedy.

11-13 ARTICLE 5. SAVINGS BANKS AND LIMITED SAVINGS BANKS

11-14 SECTION 5.01. Chapter 59, Finance Code, is amended by  
 11-15 adding Section 59.011 to read as follows:

11-16 Sec. 59.011. LENDER LIABILITY FOR CONSTRUCTION. (a) For  
 11-17 purposes of Chapter 27, Property Code, and Title 16, Property Code,  
 11-18 a federally insured financial institution regulated under this code  
 11-19 is not a builder.

11-20 (b) A lender regulated by this code that forecloses on or  
 11-21 otherwise acquires a home through the foreclosure process or other  
 11-22 legal means when the loan is in default is not liable to a  
 11-23 subsequent purchaser for any construction defects of which the  
 11-24 lender had no knowledge that were created prior to the acquisition  
 11-25 of the home by the lender.

11-26 (c) A builder hired by a lender to complete the construction  
 11-27 of a foreclosed home is not liable for any construction defects of  
 11-28 which the builder had no knowledge that existed prior to the  
 11-29 acquisition of the home by the lender, but the builder is subject to  
 11-30 Chapter 27, Property Code, and Title 16, Property Code, for work  
 11-31 performed for the lender subsequent to the acquisition of the home  
 11-32 by the lender.

11-33 SECTION 5.02. Section 91.002, Finance Code, is amended by  
 11-34 amending Subdivisions (2) and (18) and adding Subdivision (16-a) to  
 11-35 read as follows:

11-36 (2) "Board" means the board of directors of a savings  
 11-37 bank or the managers of a savings bank organized as a limited  
 11-38 savings bank.

11-39 (16-a) "Limited savings bank" means a savings bank  
 11-40 electing to be organized as a limited liability company under this  
 11-41 subtitle.

11-42 (18) "Member" means:

11-43 (A) [7] with respect to a mutual savings bank, a  
 11-44 person:

11-45 (i) [~~A~~] holding an account with the  
 11-46 mutual savings bank;

11-47 (ii) [~~B~~] assuming or obligated on a loan  
 11-48 in which the mutual savings bank has an interest; or

11-49 (iii) [~~C~~] owning property that secures a  
 11-50 loan in which the mutual savings bank has an interest; or

11-51 (B) with respect to a savings bank organized as a  
 11-52 limited savings bank, a person who owns a membership interest in the  
 11-53 limited savings bank.

11-54 SECTION 5.03. Section 92.001, Finance Code, is amended to  
 11-55 read as follows:

11-56 Sec. 92.001. APPLICABILITY OF OTHER LAW. (a) With respect  
 11-57 to a savings bank, other than a savings bank organized as a limited  
 11-58 savings bank, organized before January 1, 2006, the [The] Texas  
 11-59 Business Corporation Act, the Texas Miscellaneous Corporation Laws  
 11-60 Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), and  
 11-61 other law relating to general business corporations apply to a  
 11-62 savings bank to the extent not inconsistent with this subtitle or  
 11-63 the proper business of a savings bank.

11-64 (b) With respect to a savings bank organized as a limited  
 11-65 savings bank before January 1, 2006, the Texas Limited Liability  
 11-66 Company Act (Article 1528n, Vernon's Texas Civil Statutes) and any  
 11-67 other law relating to a limited liability company organized in  
 11-68 Texas apply to a limited savings bank to the extent not inconsistent  
 11-69 with this subtitle or the proper business of a limited savings bank.

12-1 (c) With respect to a savings bank, other than a savings  
 12-2 bank organized as a limited savings bank, organized on or after  
 12-3 January 1, 2006, the provisions of the Business Organizations Code  
 12-4 applicable to general business corporations apply to a savings bank  
 12-5 to the extent not inconsistent with this subtitle or the proper  
 12-6 business of a savings bank.

12-7 (d) With respect to a savings bank organized as a limited  
 12-8 savings bank on or after January 1, 2006, the provisions of the  
 12-9 Business Organizations Code applicable to a limited liability  
 12-10 company organized in this state apply to a limited savings bank to  
 12-11 the extent not inconsistent with this subtitle or the proper  
 12-12 business of a limited savings bank.

12-13 (e) With respect to a savings bank or limited savings bank  
 12-14 organized before January 1, 2006, the finance commission may  
 12-15 establish rules permitting a savings bank or limited savings bank  
 12-16 to elect to be governed by the provisions of the Business  
 12-17 Organizations Code to the extent not inconsistent with this  
 12-18 subtitle or the proper business of a savings bank or limited savings  
 12-19 bank.

12-20 SECTION 5.04. Section 92.101, Finance Code, is amended to  
 12-21 read as follows:

12-22 Sec. 92.101. PURPOSE OF INCORPORATION. A person may apply  
 12-23 to incorporate a savings bank for the purpose of:

12-24 (1) purchasing the assets, assuming the liabilities  
 12-25 other than liability to shareholders, and continuing the business  
 12-26 of a financial institution the commissioner considers to be in an  
 12-27 unsafe condition; ~~or~~

12-28 (2) acquiring an existing financial institution by  
 12-29 merger; or

12-30 (3) facilitating a reorganization or merger with or  
 12-31 into a savings bank under rules adopted by the finance commission.

12-32 SECTION 5.05. Section 92.102, Finance Code, is amended by  
 12-33 amending Subsection (d) and adding Subsection (e) to read as  
 12-34 follows:

12-35 (d) Chapter 2001, Government Code, does not apply to the  
 12-36 application if:

12-37 (1) ~~if~~ the commissioner considers the financial  
 12-38 institution to be reorganized or merged to be in an unsafe  
 12-39 condition; or

12-40 (2) the savings bank incorporated under this  
 12-41 subchapter does not survive the merger or is facilitating the  
 12-42 continuation of an existing savings bank corporate reorganization  
 12-43 as defined by rules adopted by the finance commission.

12-44 (e) If the commissioner considers the financial institution  
 12-45 to be reorganized or merged to be in an unsafe condition, ~~+~~

12-46 ~~(1) Chapter 2001, Government Code, does not apply to~~  
 12-47 ~~the application; and~~

12-48 ~~(2)~~ the application and all information relating to  
 12-49 the application are confidential and not subject to public  
 12-50 disclosure.

12-51 SECTION 5.06. Section 92.156, Finance Code, is amended by  
 12-52 amending Subsections (a) and (c) and adding Subsection (e) to read  
 12-53 as follows:

12-54 (a) A savings bank shall maintain ~~on file with the~~  
 12-55 ~~commissioner~~ a blanket indemnity bond with an adequate corporate  
 12-56 surety protecting the savings bank from loss by or through  
 12-57 dishonest or criminal action or omission, including fraud, theft,  
 12-58 robbery, or burglary, by an officer or employee of the savings bank  
 12-59 or a director of the savings bank when the director performs the  
 12-60 duty of an officer or employee.

12-61 (c) Subject to rules adopted under Subsection (e), the ~~The~~  
 12-62 board shall ~~and the commissioner must~~ approve:

12-63 (1) the amount and form of the bond; and

12-64 (2) the sufficiency of the surety.

12-65 (e) The finance commission may adopt rules establishing the  
 12-66 amount and form of the bond and the sufficiency of the surety.

12-67 SECTION 5.07. Section 92.204, Finance Code, is amended to  
 12-68 read as follows:

12-69 Sec. 92.204. ~~QUALIFICATION UNDER ASSET TEST OR~~ QUALIFIED

13-1 THRIFT LENDER TEST. (a) A savings bank must ~~[qualify under and~~  
 13-2 ~~continue to meet]~~:

13-3 (1) ~~qualify under and continue to meet [the asset test~~  
 13-4 ~~of Section 7701(a)(19), Internal Revenue Code of 1986 (26 U.S.C.~~  
 13-5 ~~Section 7701(a)(19))]; or~~

13-6 [~~2~~] the qualified thrift lender test of Section  
 13-7 10(m), Home Owners' Loan Act (12 U.S.C. Section 1467a(m)); or

13-8 (2) maintain more than 50 percent of its portfolio  
 13-9 assets in qualified thrift assets on a monthly average basis in at  
 13-10 least nine out of 12 months.

13-11 (b) For purposes of Subsection (a)(2), "qualified thrift  
 13-12 assets" means:

13-13 (1) qualified thrift investments as defined by 12  
 13-14 U.S.C. Section 1467a(m)(4)(C); and

13-15 (2) other assets determined by the commissioner, under  
 13-16 rules adopted by the finance commission, to be substantially  
 13-17 equivalent to qualified thrift investments described by  
 13-18 Subdivision (1) or which further residential lending or community  
 13-19 development.

13-20 (c) The commissioner may grant temporary or limited  
 13-21 exceptions to the requirements of this section as the commissioner  
 13-22 considers necessary.

13-23 SECTION 5.08. Section 92.207, Finance Code, is amended to  
 13-24 read as follows:

13-25 Sec. 92.207. LIMITATION ON ISSUANCE OF SECURITIES. A  
 13-26 savings bank may issue a form of stock, share, account, or  
 13-27 investment certificate only as authorized by this subtitle or as  
 13-28 permitted for a national bank, federal savings and loan  
 13-29 association, federal savings bank, or state bank.

13-30 SECTION 5.09. Section 92.208, Finance Code, is amended by  
 13-31 amending Subsection (c) and adding Subsection (e) to read as  
 13-32 follows:

13-33 (c) A savings bank may not purchase, directly or indirectly,  
 13-34 its own issued common stock, except under a stock repurchase plan  
 13-35 approved in advance by the commissioner.

13-36 (e) Subsections (b) and (c) apply to the securities of the  
 13-37 savings bank's holding company and affiliates.

13-38 SECTION 5.10. Section 92.211, Finance Code, is amended to  
 13-39 read as follows:

13-40 Sec. 92.211. DIVIDENDS ON CAPITAL STOCK. (a) The board of  
 13-41 a capital stock savings bank may declare and pay a dividend out of  
 13-42 current or retained income, in cash or additional stock, to the  
 13-43 holders of record of the stock outstanding on the date the dividend  
 13-44 is declared.

13-45 (b) Without the prior approval of the commissioner, a cash  
 13-46 dividend may not be declared by the board of a savings bank that the  
 13-47 commissioner considers:

13-48 (1) to be in an unsafe condition; or  
 13-49 (2) to have less than zero total retained income on the  
 13-50 date of the dividend declaration.

13-51 SECTION 5.11. Section 92.252(b), Finance Code, is amended  
 13-52 to read as follows:

13-53 (b) The application to convert must:

13-54 (1) be filed in the office of the commissioner not  
 13-55 later than the 30th [~~10th~~] day after the date of the meeting; and

13-56 (2) include a copy of the minutes of the meeting, sworn  
 13-57 to by the secretary or an assistant secretary.

13-58 SECTION 5.12. Section 92.301(b), Finance Code, is amended  
 13-59 to read as follows:

13-60 (b) The application to convert must:

13-61 (1) be submitted to the commissioner and mailed to the  
 13-62 appropriate banking agency not later than the 30th [~~10th~~] day after  
 13-63 the date of the meeting; and

13-64 (2) include a copy of the minutes of the meeting, sworn  
 13-65 to by the secretary or an assistant secretary.

13-66 SECTION 5.13. Sections 92.302(b) and (c), Finance Code, are  
 13-67 amended to read as follows:

13-68 (b) The directors, or the president and secretary, shall  
 13-69 execute two copies of an application for certificate of

14-1 incorporation as provided by Subchapter B.

14-2 (c) Each director, or the president and secretary, shall  
 14-3 sign and acknowledge the application for certificate of  
 14-4 incorporation as a subscriber and shall sign and acknowledge the  
 14-5 bylaws as an incorporator.

14-6 SECTION 5.14. Section 92.351(a), Finance Code, is amended  
 14-7 to read as follows:

14-8 (a) A savings bank may reorganize, merge, or consolidate  
 14-9 with a corporation, another financial institution, or another  
 14-10 entity under a plan adopted by the board.

14-11 SECTION 5.15. Chapter 92, Finance Code, is amended by  
 14-12 adding Subchapter M to read as follows:

14-13 SUBCHAPTER M. LIMITED SAVINGS BANK

14-14 Sec. 92.601. APPLICATION TO ORGANIZE. (a) Five or more  
 14-15 adult residents of this state may apply to organize a savings bank  
 14-16 as a limited savings bank by submitting to the commissioner:

14-17 (1) an application to organize a limited savings bank  
 14-18 that is:

14-19 (A) in a form specified by the commissioner; and

14-20 (B) signed by each organizer; and

14-21 (2) the filing fee.

14-22 (b) An application must contain:

14-23 (1) two copies of the limited savings bank's  
 14-24 certificate of formation containing:

14-25 (A) the name of the savings bank;

14-26 (B) the location of the principal office;

14-27 (C) the names and addresses of the initial  
 14-28 managers; and

14-29 (D) to the extent not inconsistent with this  
 14-30 subtitle, the proper business of a savings bank, or a rule adopted  
 14-31 by the finance commission related to savings banks, other  
 14-32 provisions included in:

14-33 (i) the articles of organization of a  
 14-34 limited liability company organized under the Texas Limited  
 14-35 Liability Company Act (Article 1528n, Vernon's Texas Civil  
 14-36 Statutes) if the limited savings bank was organized before January  
 14-37 1, 2006; or

14-38 (ii) the certificate of formation of a  
 14-39 limited liability company organized under Chapter 101, Business  
 14-40 Organizations Code, if:

14-41 (a) the limited savings bank was  
 14-42 organized on or after January 1, 2006; or

14-43 (b) the organizers elect to include  
 14-44 those provisions, if the limited savings bank was organized before  
 14-45 January 1, 2006;

14-46 (2) two copies of the savings bank's company  
 14-47 agreement;

14-48 (3) data sufficiently detailed and comprehensive in  
 14-49 nature to enable the commissioner to make findings under Section  
 14-50 92.058, including statements, exhibits, and maps;

14-51 (4) financial information about each applicant,  
 14-52 organizer, manager, officer, or member that the finance commission  
 14-53 requires by rule; and

14-54 (5) other information relating to the savings bank and  
 14-55 its operation that the finance commission requires by rule.

14-56 (c) Financial information described by Subsection (b) is  
 14-57 confidential and not subject to public disclosure unless the  
 14-58 commissioner finds that disclosure is necessary and in the public  
 14-59 interest.

14-60 (d) The statement of fact must be signed and sworn to.

14-61 (e) Subchapter B, Chapter 92, applies to the organization of  
 14-62 a limited savings bank except to the extent inconsistent with this  
 14-63 section.

14-64 Sec. 92.602. LIABILITY OF MEMBERS AND MANAGERS. A member,  
 14-65 transferee of a member, or manager of a limited savings bank is not  
 14-66 liable for a debt, obligation, or liability of the limited savings  
 14-67 bank, including a debt, obligation, or liability under a judgment,  
 14-68 decree, or order of a court. A member or a manager of a limited  
 14-69 savings bank is not a proper party to a proceeding by or against a

15-1 limited savings bank unless the object of the proceeding is to  
15-2 enforce a member's or manager's right against or liability to a  
15-3 limited savings bank.

15-4 Sec. 92.603. CONTRIBUTIONS. A member of a limited savings  
15-5 bank is obligated to make contributions as required in the company  
15-6 agreement.

15-7 Sec. 92.604. MANAGERS OF A LIMITED SAVINGS BANK.  
15-8 (a) Management of a limited savings bank shall be exercised by a  
15-9 board of managers consisting of not fewer than five or more than 21  
15-10 persons.

15-11 (b) A manager must meet the qualifications for a director  
15-12 under Section 92.153.

15-13 (c) The governing documents of a limited savings bank may  
15-14 use "director" instead of "manager" and "board" instead of "board  
15-15 of managers."

15-16 Sec. 92.605. WITHDRAWAL OR REDUCTION OF MEMBER'S  
15-17 CONTRIBUTION. (a) A member may not receive from a limited savings  
15-18 bank any part of the member's contribution except as provided by  
15-19 rule adopted by the finance commission regulating withdrawal or  
15-20 reduction.

15-21 (b) A member may not receive any part of the member's  
15-22 contribution if, after the withdrawal or reduction, the capital of  
15-23 the savings bank would be reduced to less than the minimum capital  
15-24 established for the incorporation or operation of a savings bank by  
15-25 this subtitle or a rule adopted under this subtitle.

15-26 Sec. 92.606. COMPANY AGREEMENT OF LIMITED SAVINGS BANK.  
15-27 (a) A limited savings bank shall adopt a company agreement that  
15-28 contains provisions regulating the management and organization of  
15-29 the limited savings bank. The agreement is subject to the approval  
15-30 of the commissioner and must contain provisions the finance  
15-31 commission may require by a rule adopted under this subchapter.

15-32 (b) At the option of the limited savings bank, the term  
15-33 "bylaws" may be substituted for the term "company agreement."

15-34 Sec. 92.607. DISSOLUTION. (a) A limited savings bank  
15-35 organized under this chapter is dissolved on:

15-36 (1) the expiration of the period fixed for the  
15-37 duration of the limited savings bank; or

15-38 (2) the occurrence of events specified in the  
15-39 certificate of formation or company agreement to cause dissolution.

15-40 (b) A dissolution under this section is considered a  
15-41 resolution to close the savings bank under Section 96.251.

15-42 Sec. 92.608. ALLOCATION OF PROFITS AND LOSSES. The profits  
15-43 and losses of a limited savings bank may be allocated among the  
15-44 members and among classes of members as provided by the company  
15-45 agreement. Without the prior written approval of the commissioner  
15-46 to use a different allocation method, the profits and losses must be  
15-47 allocated according to the relative interests of the members in the  
15-48 limited savings bank.

15-49 Sec. 92.609. DISTRIBUTIONS. Subject to rules adopted by  
15-50 the finance commission, distributions of cash or other assets of a  
15-51 limited savings bank may be made to the members as provided by the  
15-52 company agreement. Without the prior written approval of the  
15-53 commissioner to use a different distribution method, distributions  
15-54 must be made to the members according to the relative interests of  
15-55 the members as reflected in the governing documents of the limited  
15-56 savings bank filed with and approved by the commissioner.

15-57 Sec. 92.610. AMENDMENT OF GOVERNING DOCUMENTS. (a) A  
15-58 limited savings bank may amend its certificate of formation by a  
15-59 majority vote of the members cast at any annual meeting or a special  
15-60 meeting called for that purpose unless the certificate of formation  
15-61 requires a higher percentage.

15-62 (b) If provided in the governing documents, the company  
15-63 agreement of a limited savings bank may be amended by a majority  
15-64 vote of the board of managers unless the governing documents  
15-65 require a higher percentage. In the absence of an express provision  
15-66 in the governing documents, the company agreement may be amended by  
15-67 a majority vote of the members cast at any annual meeting or special  
15-68 meeting called for that purpose.

15-69 (c) An amendment to the governing documents may not take

effect before it is filed with and approved by the commissioner.

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

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

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

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

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

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

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

SECTION 5.16. Section 93.001(c), Finance Code, is amended to read as follows:

(c) A savings bank may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17-1           (b) Notwithstanding any other law, a savings bank organized  
 17-2 and chartered under this chapter may perform an act, own property,  
 17-3 or offer a product or service that is at the time permissible within  
 17-4 the United States for a depository institution organized under  
 17-5 federal law or the law of this state or another state if the  
 17-6 commissioner approves the exercise of the power as provided by this  
 17-7 section, subject to the same limitations and restrictions  
 17-8 applicable to the other depository institution by pertinent law,  
 17-9 except to the extent the limitations and restrictions are modified  
 17-10 by rules adopted under Subsection (e). This section may not be used  
 17-11 to alter or negate the application of the laws of this state with  
 17-12 respect to:

17-13           (1) establishment and maintenance of a branch in this  
 17-14 state or another state or country;

17-15           (2) permissible interest rates and loan fees  
 17-16 chargeable in this state;

17-17           (3) fiduciary duties owed to a client or customer by  
 17-18 the bank in its capacity as fiduciary in this state;

17-19           (4) consumer protection laws applicable to  
 17-20 transactions in this state; or

17-21           (5) compliance with the qualified thrift assets test  
 17-22 contained in Section 92.204.

17-23           (c) A savings bank that intends to exercise a power,  
 17-24 directly or through a subsidiary, granted by Subsection (b) that is  
 17-25 not otherwise authorized for savings banks under the statutes of  
 17-26 this state shall submit a letter to the commissioner describing in  
 17-27 detail the power that the savings bank proposes to exercise and the  
 17-28 specific authority of another depository institution to exercise  
 17-29 the power. The savings bank shall attach copies, if available, of  
 17-30 relevant law, regulations, and interpretive letters. The  
 17-31 commissioner may deny the bank from exercising the power if the  
 17-32 commissioner finds that:

17-33           (1) specific authority does not exist for another  
 17-34 depository institution to exercise the proposed power;

17-35           (2) if the savings bank is insured by the Federal  
 17-36 Deposit Insurance Corporation, the savings bank is prohibited from  
 17-37 exercising the power under Section 24, Federal Deposit Insurance  
 17-38 Act (12 U.S.C. Section 1831a), and related regulations;

17-39           (3) the exercise of the power by the bank would  
 17-40 adversely affect the safety and soundness of the bank; or

17-41           (4) at the time the application is made, the savings  
 17-42 bank is not well capitalized and well managed.

17-43           (d) A savings bank that is denied the requested power by the  
 17-44 commissioner under this section may appeal. The notice of appeal  
 17-45 must be in writing and must be received by the commissioner not  
 17-46 later than the 30th day after the date of the denial. An appeal  
 17-47 under this section is a contested case under Chapter 2001,  
 17-48 Government Code.

17-49           (e) To effectuate this section, the finance commission may  
 17-50 adopt rules implementing the method or manner in which a savings  
 17-51 bank exercises specific powers granted under this section,  
 17-52 including rules regarding the exercise of a power that would be  
 17-53 prohibited to savings banks under state law but for this section.

17-54           (f) The exercise of a power by a savings bank in compliance  
 17-55 with and in the manner authorized by this section is not a violation  
 17-56 of any statute of this state.

17-57           SECTION 5.18. Section 94.201, Finance Code, is amended to  
 17-58 read as follows:

17-59           Sec. 94.201. REQUIRED INVESTMENTS. A savings bank shall  
 17-60 maintain in the savings bank's portfolio not less than 15 percent of  
 17-61 the savings bank's deposits from its local service area designated  
 17-62 under Section 94.202 in:

17-63           (1) first and second lien residential mortgage loans,  
 17-64 home equity loans, or foreclosed residential mortgage loans  
 17-65 originated in the savings bank's local service area;

17-66           (2) home improvement loans;

17-67           (3) interim residential construction loans;

17-68           (4) mortgage-backed securities secured by loans in the  
 17-69 savings bank's local service area; ~~and~~

18-1 (5) loans for community reinvestment; and  
 18-2 (6) other loans made to customers in the savings bank's  
 18-3 local service area that meet the definition of qualified thrift  
 18-4 assets under Section 92.204.

18-5 SECTION 5.19. Section 96.053(a), Finance Code, is amended  
 18-6 to read as follows:

18-7 (a) Before March [~~February~~] 1 of each year, a savings bank  
 18-8 shall provide to the commissioner on a form to be prescribed and  
 18-9 furnished by the commissioner a written report of its affairs and  
 18-10 operations, including a complete statement of its financial  
 18-11 condition with a statement of income and expenses since its last  
 18-12 annual report under this section. The report must be signed by the  
 18-13 president, vice president, or secretary of the savings bank.

18-14 SECTION 5.20. Sections 97.001-97.007, Finance Code, are  
 18-15 designated as Subchapter A, Chapter 97, Finance Code, and a  
 18-16 subchapter heading is added to read as follows:

18-17 SUBCHAPTER A. GENERAL PROVISIONS APPLICABLE TO HOLDING COMPANIES

18-18 SECTION 5.21. Chapter 97, Finance Code, is amended by  
 18-19 adding Subchapter B to read as follows:

18-20 SUBCHAPTER B. MUTUAL HOLDING COMPANIES

18-21 Sec. 97.051. REORGANIZATION TO BECOME MUTUAL HOLDING  
 18-22 COMPANY. (a) Notwithstanding any other law, a savings bank may be  
 18-23 reorganized as a mutual holding company by submitting to the  
 18-24 commissioner an application for approval of reorganization.

18-25 (b) Before submission, an application for reorganization  
 18-26 must be approved by a majority vote of the members or shareholders  
 18-27 of the savings bank cast at an annual meeting or a special meeting  
 18-28 called to consider the reorganization.

18-29 Sec. 97.052. APPLICATION FOR APPROVAL OF REORGANIZATION.  
 18-30 The application for approval of reorganization must contain:

18-31 (1) a brief statement summarizing a reorganization  
 18-32 plan;

18-33 (2) two copies of the proposed articles of  
 18-34 incorporation of the subsidiary savings bank acknowledged by the  
 18-35 incorporators of the subsidiary savings bank;

18-36 (3) two copies of the proposed bylaws of the savings  
 18-37 bank;

18-38 (4) a statement that the plan of reorganization was  
 18-39 advised, authorized, and approved by the savings bank in the manner  
 18-40 and by the vote required by its charter and the laws of this state;  
 18-41 and

18-42 (5) a statement of the manner of approval.

18-43 Sec. 97.053. PLAN OF REORGANIZATION. (a) The plan of  
 18-44 reorganization must provide that:

18-45 (1) a subsidiary savings bank shall:

18-46 (A) be incorporated under Subchapter B, Chapter  
 18-47 92; or

18-48 (B) on prior approval of the commissioner, be  
 18-49 incorporated under Subchapter C, Chapter 92;

18-50 (2) the savings bank shall transfer a substantial part  
 18-51 of its assets to the subsidiary savings bank, and the subsidiary  
 18-52 savings bank shall assume a substantial part of the savings bank's  
 18-53 liabilities, including all depository liabilities;

18-54 (3) as a result of the reorganization, the mutual  
 18-55 holding company must hold more than 50 percent of the stock of the  
 18-56 subsidiary savings bank; and

18-57 (4) after transfer and assumption, persons with prior  
 18-58 corresponding rights as depositors or creditors against a savings  
 18-59 bank have the same rights with respect to the mutual holding company  
 18-60 and the subsidiary savings bank.

18-61 (b) The plan of reorganization must set forth the necessary  
 18-62 corporate steps for the savings bank to reorganize into a mutual  
 18-63 holding company, including:

18-64 (1) all required charter amendments; and

18-65 (2) a description of the corporate management of the  
 18-66 reorganized mutual holding company.

18-67 (c) The plan of reorganization may contain any other  
 18-68 provision not inconsistent with law or finance commission rules.

18-

## ARTICLE 6. AMENDMENTS TO MORTGAGE BROKER LICENSE ACT

19-1 SECTION 6.01. Section 156.005, Finance Code, is amended to  
 19-2 read as follows:

19-3 Sec. 156.005. AFFILIATED BUSINESS ARRANGEMENTS. Unless  
 19-4 prohibited by federal or state law, this chapter may not be  
 19-5 construed to prevent affiliated or controlled business  
 19-6 arrangements or loan origination services by or between mortgage  
 19-7 brokers and other professionals if the mortgage broker complies  
 19-8 with all applicable federal and state laws permitting those  
 19-9 arrangements or services.

19-10 SECTION 6.02. Section 156.102(d), Finance Code, is amended  
 19-11 to read as follows:

19-12 (d) The finance commission shall consult with the  
 19-13 commissioner [~~mortgage broker advisory committee~~] when proposing  
 19-14 and adopting rules under this chapter.

19-15 SECTION 6.03. Section 156.104, Finance Code, is amended by  
 19-16 amending Subsection (h) and adding Subsections (j) and (k) to read  
 19-17 as follows:

19-18 (h) In addition to other powers and duties delegated to it  
 19-19 by the commissioner, the advisory committee shall advise the  
 19-20 [~~finance commission and~~] commissioner with respect to:

19-21 (1) the proposal and adoption of rules relating to:

19-22 (A) the licensing of mortgage brokers and loan  
 19-23 officers;

19-24 (B) the education and experience requirements  
 19-25 for licensing mortgage brokers and loan officers;

19-26 (C) conduct and ethics of mortgage brokers and  
 19-27 loan officers;

19-28 (D) continuing education for licensed mortgage  
 19-29 brokers and loan officers and the types of courses acceptable as  
 19-30 continuing education courses under this chapter; and

19-31 (E) the granting or denying of an application or  
 19-32 request for renewal for a mortgage broker license or loan officer  
 19-33 license;

19-34 (2) the form of or format for any applications or other  
 19-35 documents under this chapter; and

19-36 (3) the interpretation, implementation, and  
 19-37 enforcement of this chapter.

19-38 (j) The advisory committee shall take a record vote on any  
 19-39 matter described by Subsection (h)(1). The commissioner shall  
 19-40 inform the finance commission of:

19-41 (1) the result of the vote; and

19-42 (2) any additional information the commissioner  
 19-43 considers necessary to ensure the finance commission is  
 19-44 sufficiently notified of the advisory committee's recommendations.

19-45 (k) A record vote taken by the advisory committee under  
 19-46 Subsection (j) is only a recommendation and does not supersede the  
 19-47 rulemaking authority of the finance commission under this  
 19-48 subchapter.

19-49 SECTION 6.04. Section 156.201(c), Finance Code, is amended  
 19-50 to read as follows:

19-51 (c) Each mortgage broker licensed under this chapter is  
 19-52 responsible to the commissioner and members of the public for any  
 19-53 act or conduct performed [~~under this chapter~~] by the mortgage  
 19-54 broker or a loan officer sponsored by or acting for the mortgage  
 19-55 broker in connection with:

19-56 (1) the origination of a mortgage loan; or

19-57 (2) a transaction that is related to the origination  
 19-58 of a mortgage loan in which the mortgage broker knew or should have  
 19-59 known of the transaction.

19-60 SECTION 6.05. Section 156.202, Finance Code, is amended to  
 19-61 read as follows:

19-62 Sec. 156.202. EXEMPTIONS. This chapter does not apply to:

19-63 (1) any of the following entities or an employee of any  
 19-64 of the following entities provided the employee is acting for the  
 19-65 benefit of the employer:

19-66 (A) a bank, savings bank, or savings and loan  
 19-67 association, or a subsidiary or an affiliate of a bank, savings  
 19-68 bank, or savings and loan association;

20-1 (B) a state or federal credit union, or a  
20-2 subsidiary, affiliate, or credit union service organization of a  
20-3 state or federal credit union;

20-4 (C) an insurance company licensed or authorized  
20-5 to do business in this state under the Insurance Code;

20-6 (D) a mortgage banker registered under Chapter  
20-7 157;

20-8 (E) an organization that qualifies for an  
20-9 exemption from state franchise and sales tax as a 501(c)(3)  
20-10 organization;

20-11 (F) a Farm Credit System institution; or

20-12 (G) a political subdivision of this state  
20-13 involved in affordable home ownership programs;

20-14 (2) an individual who makes a mortgage loan from the  
20-15 individual's own funds to a spouse, former spouse, or persons in the  
20-16 lineal line of consanguinity of the individual lending the money;

20-17 (3) an owner of real property who makes a mortgage loan  
20-18 to a purchaser of the property for all or part of the purchase price  
20-19 of the real estate against which the mortgage is secured; or

20-20 (4) an individual who:  
20-21 (A) makes a mortgage loan from the individual's  
20-22 own funds;

20-23 (B) is not an authorized lender under Chapter  
20-24 342, Finance Code; and

20-25 (C) does not regularly engage in the business of  
20-26 making or brokering mortgage loans.

20-27 SECTION 6.06. Section 156.203(d), Finance Code, is amended  
20-28 to read as follows:

20-29 (d) An application fee under this section is not refundable  
20-30 and may not be credited or applied to any other fee or indebtedness  
20-31 owed by the person paying the fee.

20-32 SECTION 6.07. Sections 156.204(a) and (c), Finance Code, as  
20-33 amended by Chapters 170 and 171, Acts of the 78th Legislature,  
20-34 Regular Session, 2003, are reenacted and amended to read as  
20-35 follows:

20-36 (a) To be eligible to be licensed as a mortgage broker a  
20-37 person must:

20-38 (1) be an individual who is at least 18 years of age;

20-39 (2) be a citizen of the United States or a lawfully  
20-40 admitted alien;

20-41 (3) maintain a physical office in this state and  
20-42 designate that office in the application;

20-43 (4) provide the commissioner with satisfactory  
20-44 evidence that the applicant satisfies one of the following:

20-45 (A) the person has received a bachelor's degree  
20-46 in an area relating to finance, banking, or business administration  
20-47 from an accredited college or university and has 18 months of  
20-48 experience in the mortgage or lending field as evidenced by  
20-49 documentary proof of full-time employment as a mortgage broker or  
20-50 loan officer with a mortgage broker or a person exempt under Section  
20-51 156.202;

20-52 (B) the person is licensed in this state as:

20-53 (i) an active real estate broker under  
20-54 Chapter 1101, Occupations Code;

20-55 (ii) an active attorney; or

20-56 (iii) a local recording agent or insurance  
20-57 solicitor or agent for a legal reserve life insurance company under  
20-58 Chapter 21, Insurance Code, or holds an equivalent license under  
20-59 Chapter 21, Insurance Code; or

20-60 (C) the person has three years of experience in  
20-61 the mortgage lending field as evidenced by documentary proof of  
20-62 full-time employment as a loan officer with a mortgage broker or a  
20-63 person exempt under Section 156.202;

20-64 (5) provide the commissioner with satisfactory  
20-65 evidence of:

20-66 (A) having passed an examination, offered by a  
20-67 testing service or company approved by the finance commission, that  
20-68 demonstrates knowledge of:

20-69 (i) the mortgage industry; and

21-1 (ii) the role and responsibilities of a  
21-2 mortgage broker; and

21-3 (B) compliance with the financial requirements  
21-4 of this chapter; ~~and~~

21-5 (6) not have been convicted of a criminal offense that  
21-6 the commissioner determines directly relates to the occupation of a  
21-7 mortgage broker as provided by Chapter 53, Occupations Code;

21-8 (7) satisfy the commissioner as to the individual's  
21-9 good moral character, including the individual's honesty,  
21-10 trustworthiness, and integrity; and

21-11 (8) not be in violation of this chapter, a rule adopted  
21-12 under this chapter, or any order previously issued to the  
21-13 individual by the commissioner.

21-14 (c) To be eligible to be licensed as a loan officer a person  
21-15 must:

21-16 (1) be an individual who is at least 18 years of age;

21-17 (2) be a citizen of the United States or a lawfully  
21-18 admitted alien;

21-19 (3) designate in the application the name of the  
21-20 mortgage broker sponsoring the loan officer;

21-21 (4) provide the commissioner with satisfactory  
21-22 evidence that the applicant satisfies one of the following:

21-23 (A) the person meets one of the requirements  
21-24 described by Subsection (a)(4);

21-25 (B) the person has successfully completed 30 ~~15~~  
21-26 hours of education courses approved by the commissioner under this  
21-27 section;

21-28 (C) the person has 18 months of experience as a  
21-29 loan officer as evidenced by documentary proof of full-time  
21-30 employment as a loan officer with a mortgage broker or a person  
21-31 exempt under Section 156.202; or

21-32 (D) for applications received prior to January 1,  
21-33 2000, the mortgage broker that will sponsor the applicant provides  
21-34 a certification under oath that the applicant has been provided  
21-35 necessary and appropriate education and training regarding all  
21-36 applicable state and federal law and regulations relating to  
21-37 mortgage loans;

21-38 (5) not have been convicted of a criminal offense that  
21-39 the commissioner determines directly relates to the occupation of a  
21-40 loan officer as provided by Chapter 53, Occupations Code;

21-41 (6) satisfy the commissioner as to the individual's  
21-42 good moral character, including the individual's honesty,  
21-43 trustworthiness, and integrity; ~~and~~

21-44 (7) ~~(6)~~ provide the commissioner with satisfactory  
21-45 evidence of having passed an examination, offered by a testing  
21-46 service or company approved by the finance commission, that  
21-47 demonstrates knowledge of:

21-48 (A) the mortgage industry; and

21-49 (B) the role and responsibilities of a loan  
21-50 officer; and ~~and~~

21-51 (8) ~~(7)~~ not be in violation of this chapter, a rule  
21-52 adopted under this chapter, or any order previously issued to the  
21-53 individual by the commissioner.

21-54 SECTION 6.08. Sections 156.205(a) and (b), Finance Code,  
21-55 are amended to read as follows:

21-56 (a) In this section, "net assets" means the difference  
21-57 between total assets and total liabilities, as determined by  
21-58 generally acceptable accounting principles, and does not include  
21-59 any assets that are exempt under state or federal law. All assets  
21-60 and liabilities are subject to verification by the commissioner.

21-61 (b) A mortgage broker must maintain net assets of at least  
21-62 \$25,000 or a surety bond in the amount of at least \$50,000. The term  
21-63 of the surety bond must coincide with the term of the license. The  
21-64 finance commission may adopt rules establishing the terms and  
21-65 conditions of the surety bond and the qualifications of the surety.

21-66 SECTION 6.09. Section 156.208, Finance Code, is amended by  
21-67 amending Subsection (e) and adding Subsection (i) to read as  
21-68 follows:

21-69 (e) A renewal fee is not refundable and may not be credited

22-1 or applied to any other fee or indebtedness owed by the person  
 22-2 paying the fee.

22-3 (i) The commissioner may deny the renewal of a mortgage  
 22-4 broker license or a loan officer license if:

22-5 (1) the mortgage broker or loan officer is in  
 22-6 violation of this chapter, a rule adopted under this chapter, or any  
 22-7 order previously issued to the individual by the commissioner; or

22-8 (2) the mortgage broker or loan officer is in default  
 22-9 in the payment of any administrative penalty, fee, charge, or other  
 22-10 indebtedness owed under this title.

22-11 SECTION 6.10. Sections 156.2081(c)-(f), Finance Code, are  
 22-12 amended to read as follows:

22-13 (c) A person whose license has been expired for 91 days or  
 22-14 more may not renew the license. The person may obtain a new license  
 22-15 by complying with the requirements and procedures for obtaining an  
 22-16 original license. ~~[more than 90 days but less than one year but who~~  
 22-17 ~~is otherwise eligible to renew a license may renew the license by~~  
 22-18 ~~paying to the commissioner a renewal fee that is equal to two times~~  
 22-19 ~~the normally required renewal fee.~~

22-20 ~~[(d) A person whose license has been expired for one year or~~  
 22-21 ~~more may not renew the license. The person may obtain a new license~~  
 22-22 ~~by complying with the requirements and procedures for obtaining an~~  
 22-23 ~~original license.]~~

22-24 (d) ~~[(e)]~~ A person who was licensed in this state, moved to  
 22-25 another state, and is currently licensed and has been in practice in  
 22-26 the other state for the two years preceding the date of application  
 22-27 may obtain a new license by paying to the commissioner a fee that is  
 22-28 equal to two times the normally required renewal fee for the  
 22-29 license.

22-30 (e) ~~[(f)]~~ Not later than the 60th [30th] day before the date  
 22-31 a person's license is scheduled to expire, the commissioner shall  
 22-32 send written notice of the impending expiration to the person at the  
 22-33 person's last known address according to the records of the  
 22-34 Department of Savings and Mortgage Lending [Loan Department].

22-35 SECTION 6.11. Section 156.209, Finance Code, is amended by  
 22-36 amending Subsection (c) and adding Subsections (f) and (g) to read  
 22-37 as follows:

22-38 (c) The designated hearings officer shall set the time and  
 22-39 place for a hearing requested under Subsection (b) not later than  
 22-40 the 90th [30th] day after the date on which the appeal is received.  
 22-41 The hearings officer shall provide at least 10 days' notice of the  
 22-42 hearing to the applicant or person requesting the renewal. The time  
 22-43 of the hearing may be continued periodically with the consent of the  
 22-44 applicant or person requesting the renewal. After the hearing, the  
 22-45 commissioner shall enter an order from the findings of fact,  
 22-46 conclusions of law, and recommendations of the hearings officer.

22-47 (f) A person who requests a hearing under this section shall  
 22-48 be required to pay a deposit to secure the payment of the costs of  
 22-49 the hearing in an amount to be determined by the commissioner not to  
 22-50 exceed \$500. The entire deposit shall be refunded to the person if  
 22-51 the person prevails in the contested case hearing. If the person  
 22-52 does not prevail, any portion of the deposit in excess of the costs  
 22-53 of the hearing assessed against that person shall be refundable.

22-54 (g) A person whose application for a license has been denied  
 22-55 is not eligible to be licensed for a period of two years after the  
 22-56 date the denial becomes final, or a shorter period determined by the  
 22-57 commissioner after evaluating the specific circumstances of the  
 22-58 person's subsequent application. The finance commission may adopt  
 22-59 rules to provide conditions for which the commissioner may shorten  
 22-60 the time of disqualification.

22-61 SECTION 6.12. Section 156.211(c), Finance Code, is amended  
 22-62 to read as follows:

22-63 (c) A fee under this section is not refundable and may not be  
 22-64 credited or applied to any other fee or indebtedness owed by the  
 22-65 person paying the fee.

22-66 SECTION 6.13. Section 156.301, Finance Code, is amended by  
 22-67 adding Subsection (g) to read as follows:

22-68 (g) The commissioner may share information gathered during  
 22-69 an investigation or inspection with any state or federal agency.

23-1 SECTION 6.14. Subchapter D, Chapter 156, Finance Code, is  
 23-2 amended by adding Section 156.3011 to read as follows:

23-3 Sec. 156.3011. ISSUANCE AND ENFORCEMENT OF SUBPOENA.

23-4 (a) During an investigation, the commissioner may issue a subpoena  
 23-5 that is addressed to a peace officer of this state or other person  
 23-6 authorized by law to serve citation or perfect service. The  
 23-7 subpoena may require a person to give a deposition, produce  
 23-8 documents, or both.

23-9 (b) If a person disobeys a subpoena or if a person appearing  
 23-10 in a deposition in connection with the investigation refuses to  
 23-11 testify, the commissioner may petition a district court in Travis  
 23-12 County to issue an order requiring the person to obey the subpoena,  
 23-13 testify, or produce documents relating to the matter. The court  
 23-14 shall promptly set an application to enforce a subpoena issued  
 23-15 under Subsection (a) for hearing and shall cause notice of the  
 23-16 application and the hearing to be served upon the person to whom the  
 23-17 subpoena is directed.

23-18 SECTION 6.15. Section 156.303, Finance Code, is amended by  
 23-19 amending Subsection (a) and adding Subsections (f)-(i) to read as  
 23-20 follows:

23-21 (a) The commissioner may order disciplinary action against  
 23-22 a licensed mortgage broker or a licensed loan officer when the  
 23-23 commissioner, after a hearing, has determined that the person:

23-24 (1) obtained a license, including a renewal of a  
 23-25 license, under this chapter through a false or fraudulent  
 23-26 representation or made a material misrepresentation in an  
 23-27 application for a license or for the renewal of a license under this  
 23-28 chapter;

23-29 (2) published or caused to be published an  
 23-30 advertisement related to the business of a mortgage broker or loan  
 23-31 officer that:

23-32 (A) is misleading;  
 23-33 (B) is likely to deceive the public;  
 23-34 (C) in any manner tends to create a misleading  
 23-35 impression;

23-36 (D) fails to identify as a mortgage broker or  
 23-37 loan officer the person causing the advertisement to be published;  
 23-38 or

23-39 (E) violates federal or state law;  
 23-40 (3) while performing an act for which a license under  
 23-41 this chapter is required, engaged in conduct that constitutes  
 23-42 improper, fraudulent, or dishonest dealings;

23-43 (4) entered a plea of guilty or nolo contendere to, or  
 23-44 is convicted of, a criminal offense that is a felony or that  
 23-45 involves fraud or moral turpitude in a court of this or another  
 23-46 state or in a federal court [~~failed to notify the commissioner not~~  
 23-47 later than the 30th day after the date of the final conviction if  
 23-48 the person, in a court of this or another state or in a federal  
 23-49 court, has been convicted of or entered a plea of guilty or nolo  
 23-50 contendere to a felony or a criminal offense involving fraud];

23-51 (5) failed to use a fee collected in advance of closing  
 23-52 of a mortgage loan for a purpose for which the fee was paid;

23-53 (6) charged or received, directly or indirectly, a fee  
 23-54 for assisting a mortgage applicant in obtaining a mortgage loan  
 23-55 before all of the services that the person agreed to perform for the  
 23-56 mortgage applicant are completed, and the proceeds of the mortgage  
 23-57 loan have been disbursed to or on behalf of the mortgage applicant,  
 23-58 except as provided by Section 156.304;

23-59 (7) failed within a reasonable time to honor a check  
 23-60 issued to the commissioner after the commissioner has mailed a  
 23-61 request for payment by certified mail to the person's last known  
 23-62 business address as reflected by the commissioner's records;

23-63 (8) paid compensation to a person who is not licensed  
 23-64 or exempt under this chapter for acts for which a license under this  
 23-65 chapter is required;

23-66 (9) induced or attempted to induce a party to a  
 23-67 contract to breach the contract so the person may make a mortgage  
 23-68 loan;

23-69 (10) published or circulated an unjustified or

24-1 unwarranted threat of legal proceedings in matters related to the  
 24-2 person's actions or services as a mortgage broker or loan officer,  
 24-3 as applicable;

24-4 (11) established an association, by employment or  
 24-5 otherwise, with a person not licensed or exempt under this chapter  
 24-6 who was expected or required to act as a mortgage broker or loan  
 24-7 officer;

24-8 (12) aided, abetted, or conspired with a person to  
 24-9 circumvent the requirements of this chapter;

24-10 (13) acted in the dual capacity of a mortgage broker or  
 24-11 loan officer and real estate broker, salesperson, or attorney in a  
 24-12 transaction without the knowledge and written consent of the  
 24-13 mortgage applicant or in violation of applicable requirements under  
 24-14 federal law;

24-15 (14) discriminated against a prospective borrower on  
 24-16 the basis of race, color, religion, sex, national origin, ancestry,  
 24-17 familial status, or a disability;

24-18 (15) failed or refused on demand to:

24-19 (A) produce a document, book, or record  
 24-20 concerning a mortgage loan transaction conducted by the mortgage  
 24-21 broker or loan officer for inspection by the commissioner or the  
 24-22 commissioner's authorized personnel or representative;

24-23 (B) give the commissioner or the commissioner's  
 24-24 authorized personnel or representative free access to the books or  
 24-25 records relating to the person's business kept by an officer,  
 24-26 agent, or employee of the person or any business entity through  
 24-27 which the person conducts mortgage brokerage activities, including  
 24-28 a subsidiary or holding company affiliate; or

24-29 (C) provide information requested by the  
 24-30 commissioner as a result of a formal or informal complaint made to  
 24-31 the commissioner;

24-32 (16) failed without just cause to surrender, on  
 24-33 demand, a copy of a document or other instrument coming into the  
 24-34 person's possession that was provided to the person by another  
 24-35 person making the demand or that the person making the demand is  
 24-36 under law entitled to receive; or

24-37 (17) disregarded or violated this chapter, a rule  
 24-38 adopted by the finance commission under this chapter, or an order  
 24-39 issued by the commissioner under this chapter.

24-40 (f) For purposes of Subsection (a), a person is considered  
 24-41 convicted if a sentence is imposed on the person, the person  
 24-42 receives community supervision, including deferred adjudication  
 24-43 community supervision, or the court defers final disposition of the  
 24-44 person's case.

24-45 (g) If a person fails to pay an administrative penalty that  
 24-46 has become final or fails to comply with an order of the  
 24-47 commissioner that has become final, in addition to any other remedy  
 24-48 provided under law the commissioner, on not less than 10 days'  
 24-49 notice to the person, may without a prior hearing suspend the  
 24-50 person's mortgage broker license or loan officer license. The  
 24-51 suspension shall continue until the person has complied with the  
 24-52 cease and desist order or paid the administrative penalty. During  
 24-53 the period of suspension, the person may not originate a mortgage  
 24-54 loan and all compensation received by the person during the period  
 24-55 of suspension is subject to forfeiture as provided by Section  
 24-56 156.406(b).

24-57 (h) An order of suspension under Subsection (g) may be  
 24-58 appealed. An appeal is a contested case governed by Chapter 2001,  
 24-59 Government Code. A hearing of an appeal of an order of suspension  
 24-60 issued under Subsection (g) shall be held not later than the 15th  
 24-61 day after the date of receipt of the notice of appeal. The  
 24-62 appellant shall be provided at least three days' notice of the time  
 24-63 and place of the hearing.

24-64 (i) An order revoking the license of a mortgage broker or  
 24-65 loan officer may provide that the person is prohibited, without  
 24-66 obtaining prior written consent of the commissioner, from:

24-67 (1) engaging in the business of originating or making  
 24-68 mortgage loans;

24-69 (2) being an employee, officer, director, manager,

25-1 shareholder, member, agent, contractor, or processor of a mortgage  
 25-2 broker or loan officer; or

25-3 (3) otherwise affiliating with a person for the  
 25-4 purpose of engaging in the business of originating or making  
 25-5 mortgage loans.

25-6 SECTION 6.16. Subchapter D, Chapter 156, Finance Code, is  
 25-7 amended by adding Section 156.305 to read as follows:

25-8 Sec. 156.305. RESTITUTION. The commissioner may order a  
 25-9 person to make restitution for any amount received by that person in  
 25-10 violation of this chapter. A mortgage broker may be required to  
 25-11 make restitution for any amount received by a sponsored loan  
 25-12 officer in violation of this chapter.

25-13 SECTION 6.17. Section 156.406(c), Finance Code, is amended  
 25-14 to read as follows:

25-15 (c) If the commissioner has reasonable cause to believe that  
 25-16 a person who is not licensed or exempt under this chapter has  
 25-17 engaged, or is about to engage, in an act or practice for which a  
 25-18 license is required under this chapter, the commissioner may issue  
 25-19 without notice and hearing an order to cease and desist from  
 25-20 continuing a particular action or an order to take affirmative  
 25-21 action, or both, to enforce compliance with this chapter. The order  
 25-22 shall contain a reasonably detailed statement of the facts on which  
 25-23 the order is made. The order may assess an administrative penalty  
 25-24 in an amount not to exceed \$1,000 per day for each violation and may  
 25-25 require a person to pay to a mortgage applicant any compensation  
 25-26 received by the person from the applicant in violation of this  
 25-27 chapter. If a person against whom the order is made requests a  
 25-28 hearing, the commissioner shall set and give notice of a hearing  
 25-29 before the commissioner or a hearings officer. The hearing shall be  
 25-30 governed by Chapter 2001, Government Code. An order under this  
 25-31 subsection becomes final unless the person to whom the order is  
 25-32 issued requests a hearing not later than the 30th day after the date  
 25-33 the order is issued. [Based on the findings of fact, conclusions of  
 25-34 law, and recommendations of the hearings officer, the commissioner  
 25-35 by order may find a violation has occurred or not occurred.]

25-36 SECTION 6.18. Section 156.501(b), Finance Code, is amended  
 25-37 to read as follows:

25-38 (b) The fund shall be used to reimburse aggrieved persons to  
 25-39 whom a court awards actual damages because of certain acts  
 25-40 committed by a mortgage broker or loan officer who was licensed  
 25-41 under this chapter when the act was committed. The use of the fund  
 25-42 is limited to an act that constitutes a violation of Section  
 25-43 156.303(a)(2), (3), (5), (6), (8), (9), (10), (11), (12), (13), or  
 25-44 (16) or 156.304. Payments from the fund may not be made to a lender  
 25-45 who makes a mortgage loan originated by the mortgage broker or loan  
 25-46 officer or who acquires a mortgage loan originated by the mortgage  
 25-47 broker or loan officer.

#### 25-48 ARTICLE 7. MISCELLANEOUS PROVISIONS

25-49 SECTION 7.01. Section 304.003(c), Finance Code, is amended  
 25-50 to read as follows:

25-51 (c) The postjudgment interest rate is:

25-52 (1) the prime rate as published by the Board of  
 25-53 Governors of the Federal Reserve System [~~Federal Reserve Bank of~~  
 25-54 ~~New York~~] on the date of computation;

25-55 (2) five percent a year if the prime rate as published  
 25-56 by the Board of Governors of the Federal Reserve System [~~Federal~~  
 25-57 ~~Reserve Bank of New York~~] described by Subdivision (1) is less than  
 25-58 five percent; or

25-59 (3) 15 percent a year if the prime rate as published by  
 25-60 the Board of Governors of the Federal Reserve System [~~Federal~~  
 25-61 ~~Reserve Bank of New York~~] described by Subdivision (1) is more than  
 25-62 15 percent.

25-63 SECTION 7.02. The change in law made by Section 339.001(c),  
 25-64 Finance Code, as added by this Act, applies only to a credit card  
 25-65 transaction entered into on or after the effective date of this Act.  
 25-66 A credit card transaction entered into before that date is governed  
 25-67 by the law in effect immediately before the effective date of this  
 25-68 Act, and that law is continued in effect for that purpose.

25-69 SECTION 7.03. Not later than December 31, 2006, the Finance

26-1 Commission of Texas and the Credit Union Commission shall:  
26-2 (1) compare state laws related to financial  
26-3 institutions with applicable federal laws;  
26-4 (2) determine which state laws may be preempted by  
26-5 federal law, rule, or order;  
26-6 (3) determine which state laws may be invalidated by  
26-7 state or federal court ruling; and  
26-8 (4) report their findings to the legislature, with  
26-9 recommended statutory changes.

26-10 SECTION 7.04. Sections 96.052, 345.151, 345.152, and  
26-11 345.154, Finance Code, and Sections 2153.103, 2153.251, 2153.253,  
26-12 2153.256, 2153.257, and 2153.258(b), Occupations Code, are  
26-13 repealed.

26-14 ARTICLE 8. EFFECTIVE DATE

26-15 SECTION 8.01. Except as provided by Section 8.02 of this  
26-16 article, this Act takes effect September 1, 2005.

26-17 SECTION 8.02. Sections 2.09, 2.10, and 2.11 of this Act take  
26-18 effect on the date on which the constitutional amendment proposed  
26-19 by the 79th Legislature, Regular Session, 2005, authorizing the  
26-20 legislature to define rates of interest for commercial loans, takes  
26-21 effect. If that amendment is not approved by the voters, those  
26-22 sections have no effect.

26-23 \* \* \* \* \*