

BILL ANALYSIS

Senate Research Center

H.B. 955
By: Solomons (Averitt)
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Texas has some of the strictest lending laws in the nation, and they are increasingly constricting the ability of Texas-based institutions to compete against out-of-state lenders. As technology and a broad nationalization of lending laws—through the passage of laws by other states easing their usury limits to the outright preemption of state laws by federal regulators—permit borrowers to transact business with institutions without respect to geography, maintaining a series of strict limits on lenders will continue to choke disadvantaged local depository institutions.

Texas used to be home to some of the nation's largest depository institutions. Today, the largest national bank based in Texas ranks 80th nationally in terms of assets. It, and all other depository institutions based in Texas, are effectively unable to grow their business outside of the state because Texas law makes them uncompetitive in other states. In addition, because branches of out-of-state banks can import the laws of their home states into Texas, many of the laws passed decades ago to protect consumers now only protect out-of-state banks from Texas banks.

The complexity of our laws also leads to unexpected, and harmful, judicial decisions, which stifle commercial lending. The more that borrowers are forced to look out of state for capital, the more capital will leave this state for others. Additionally, Texas consumers must be protected from unscrupulous and predatory lending practices. Ultimately, economic development may suffer if action is not taken to restore Texas as a leader for financial services.

H.B. 955 provides for the regulation of financial businesses and practices and provides civil penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 4.05 (Section 14.261, Finance Code), SECTION 5.03 (Section 92.001, Finance Code), SECTION 5.06 (Section 92.156, Finance Code), SECTION 5.17 (Section 93.008, Finance Code) SECTION 6.08 (Section 156.205, Finance Code), and SECTION 6.11 (Section 156.209, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. CONSUMER CREDIT PROTECTIONS

SECTION 1.01. Amends Subtitle A, Title 4, Finance Code, by adding Chapter 308, as follows:

CHAPTER 308. CONSUMER CREDIT PROTECTIONS

Sec. 308.001. **APPLICABILITY.** Sets forth the persons to whom this chapter applies.

Sec. 308.002. **FALSE, MISLEADING, OR DECEPTIVE ADVERTISING.** (a) Prohibits a creditor from, in any manner, advertising or causing to be advertised a false, misleading, or deceptive statement or representation relating to a rate, term, or condition of a credit transaction or advertising credit terms that the person does not intend to offer to consumers who qualify for those terms.

(b) Provides that this section does not create a private right of action.

(c) Requires an administrative agency or court, in interpreting this section, to be guided by the applicable advertising provisions of certain statutes or acts.

(d) Provides that, if a requirement of this section and a requirement of a federal law, including a regulation or an interpretation of federal law, are inconsistent or in conflict, federal law controls and the inconsistent or conflicting requirements of this chapter do not apply.

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

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

SECTION 1.02. Amends Section 341.402(c), Finance Code, to provide that, in addition to the other liabilities prescribed by this section, a person holding a license issued under this subtitle, rather than a license issued under this subtitle that is held by a person, who violates Section 341.401 is subject to revocation or suspension of the license or the assessment of civil penalties by the consumer credit commissioner (commissioner).

SECTION 1.03. Amends Section 341.403(a), Finance Code, to prohibit a person, in any manner, from advertising credit terms that the person does not intend to offer to consumers who qualify for those terms.

SECTION 1.04. Amends Subtitle B, Title 4, Finance Code, by adding Chapter 350, as follows:

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

Sec. 350.001. APPLICABILITY. Sets forth the person to whom this chapter applies, as well as those persons to whom this chapter does not apply.

Sec. 350.002. PREVENTION OF EVASION. Prohibits a persons from using any device, subterfuge, or pretense to evade the application of this section.

Sec. 350.003. COMPLIANCE WITH FAIR TRADE PRACTICES ACT. Requires a creditor who is not licensed, registered, or otherwise exempt under this title to comply with the requirements of 15 U.S.C. Section 45. Authorizes an enforcement action to compel compliance under this section to include an action to enjoin illegal activities or order restitution.

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

ARTICLE 2. USURY FORM

SECTION 2.01. Amends Section 301.002(4), Finance Code, to redefine "interest."

SECTION 2.02. Amends Sections 303.009(a)-(d), Finance Code, as follows:

(a) Deletes existing text providing that Subsection (e) is an exception to this subsection.

(b) Deletes existing text providing that Subsections (d) and (e) are exceptions to this subsection.

(c) Deletes existing text providing that, for a credit extension in the amount of \$250,000 or more, the 24-percent limitation on the ceilings in Subsection (b) do not apply.

(d) Deletes existing text providing that, if the rate computed for the weekly ceiling, monthly ceiling, quarterly ceiling, or annualized ceiling is more than 21 percent a year, the ceiling is 21 percent a year.

SECTION 2.03. Amends Subchapter A, Chapter 303, Finance Code, by adding Section 303.017, as follows:

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

SECTION 2.04. Amends Section 303.201, Finance Code, to require a person engaged in the business of making loans for personal, family, or household use for which the rate is authorized under this chapter to obtain a license under Chapter 342.

SECTION 2.05. Amends Section 305.001, Finance Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Provides that a creditor who contracts for, charges, or receives interest that is greater than the amount authorized by this subtitle in connection with a transaction for personal, family, or household use is liable to the obligor for a specific amount.

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

SECTION 2.06. Amends Section 305.002(b), Finance Code, to make a conforming change.

SECTION 2.07. Amends Sections 305.006(b) and (d), Finance Code, as follows:

(b) Requires the obligor, not later than the 61st day before the date an obligor files a suit seeking penalties for a transaction in which a creditor has received usurious interest, to give the creditor written notice stating in reasonable detail the nature and amount of the violation.

(d) Deletes existing exception to the notice requirement of Subsection (b). Requires the defendant, with respect to a defendant filing a counterclaim action alleging usurious interest in an original action by the creditor, to provide notice complying with Subsection (b) at the time of filing the counterclaim and, on application of the creditor to the court, provides that the action is subject to abatement for a period of 60 days from the date of the court order. Authorizes the creditor to correct a violation during the abatement period. Requires the creditor, as part of the correction of the violation, to offer to pay the obligor's reasonable attorney's fees as determined by the court based on the hours reasonably expended by the obligor's counsel with regard to the alleged violation before the abatement. Provides that a creditor who corrects a violation as provided by this subsection is no longer liable to an obligor for the violation.

SECTION 2.08. Amends Sections 306.002(2) and (8), Finance Code, to redefine "affiliate of an obligor," to delete existing definition of "prepayment penalty," and to define "prepayment premium."

SECTION 2.09. Amends Section 306.001, Finance Code, by adding Subdivision (5-a) and amending Subdivision (9), to define "exempt commercial loan" and to redefine "qualified commercial loan."

SECTION 2.10. Amends Section 306.002, Finance Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Provides that Section 306.1015 contains an exception to this subsection.

(c) Provides that the provisions of this chapter do not affect transactions that are not subject to this chapter nor affect or negatively impact any rule of law applicable to transactions not subject to this chapter.

SECTION 2.11. Amends Subchapter B, Chapter 306, Finance Code, by adding Section 306.1015, as follows:

Sec. 306.1015. EXEMPT COMMERCIAL LOAN--RATE CEILINGS INAPPLICABLE. Authorizes the parties to an exempt commercial loan agreement to contract for, charge, and receive any rate or amount of interest to which the parties agree, however computed. Provides that a rate ceiling provided by this title or another law of this state does not apply to an exempt commercial loan.

SECTION 2.12. Amends Section 306.005, Finance Code, as follows:

Sec. 306.005. New heading: PREPAYMENT PREMIUMS AND SIMILAR AMOUNTS. Authorizes a creditor and an obligor, with respect to a loan subject to this chapter, to agree to a prepayment premium, make-whole premium, or similar fee or charge, whether payable in the event of voluntary prepayment, involuntary prepayment, acceleration of maturity, or other cause that involves premature termination of the loan, and those amounts do not constitute interest. Deletes existing text relating to a prepayment penalty.

SECTION 2.13. Amends Section 306.006, Finance Code, to authorize the parties to a commercial loan, in addition to the interest authorized by this chapter, to agree and stipulate for a returned check fee in an amount that does not exceed the maximum fee authorized in Section 3.506, Business & Commerce Code, rather than \$25, on any check, draft, order, or other instrument or form of remittance that is returned unpaid or dishonored for any reason.

SECTION 2.14. Amends Subchapter A, Chapter 306, Finance Code, by adding Section 306.007, as follows:

Sec. 306.007. GUARANTY, ASSUMPTION, PAYMENT, OR OTHER AGREEMENT. Provides that an obligor, with respect to a commercial loan, may be required to assume, pay, or provide a guaranty of another person's existing or future obligation as a condition of the obligor's own use, forbearance, or detention of money. Provides that the amount of the other person's obligation required to be assumed, paid, or guaranteed does not constitute interest with respect to any obligation of the obligor.

SECTION 2.15. Amends Section 345.104(a), Finance Code, to delete existing text authorizing a retail charge agreement, as an alternative to the maximum rate or amount authorized for a time price differential under Section 345.103, to provide for a rate or amount of time price differential that does not exceed the rate or amount of the applicable market competitive rate ceiling published under Subchapter D.

SECTION 2.16. Amends Section 346.004, Finance Code, to provide that, unless the contract for the account provides otherwise, this chapter applies to a revolving credit account described by Section 346.003 if the loan or extension of credit is primarily for personal, family, or household use. Provides that, unless the contract for the account provides that this chapter applies, this chapter does not apply to a revolving credit account described by Section 346.003 if the loan or extension of credit is for business, commercial, investment, or similar purposes, rather than that, unless the contract for the account provides otherwise, this chapter applies to a revolving credit

account described by Section 346.003 regardless of whether the loan or extension of credit is for consumer or business purposes.

SECTION 2.17. Amends Subchapter A, Chapter 347, Finance Code, by adding Section 347.007, as follows:

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

SECTION 2.18. Amends Section 348.001, Finance Code, by amending Subdivision (4) and adding Subdivisions (3-a) and (10-a), to define "motor home" and "towable recreation vehicle" and to redefine "motor vehicle."

SECTION 2.19. Amends Section 348.007, Finance Code, by adding Subsection (a-1), to authorize 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 to be subject to this chapter instead of Chapter 345 at the option of the seller.

SECTION 2.20. Amends Section 342.308(a), Finance Code, to delete existing text authorizing a lender or a person who is assigned a secondary mortgage loan to collect on or before the closing of the loan, or include in the principal of the loan, reasonable fees for an appraisal of real property offered as a security for the loan prepared by a licensed or certified appraiser.

ARTICLE 3. TEXAS SAVINGS AND MORTGAGE LENDING DEPARTMENT

SECTION 3.01. Provides that the legislature finds that the Savings and Loan Department regulates state-chartered savings and loan institutions, savings banks, licensed mortgage brokers, and loan officers and registers mortgage bankers, there is one state-chartered savings and loan institution that has not converted to a state-chartered savings bank or other form of institution, and the department's name no longer fits the activities and regulatory responsibilities of the department, and does not provide sufficient clarity of its functions to the public.

SECTION 3.02. Amends Chapter 13, Finance Code, by adding Section 13.0015, as follows:

Sec. 13.0015. NAME CHANGES. Provides that the Savings and Loan Department is renamed the Department of Savings and Mortgage Lending and the savings and loan commissioner is renamed the savings and mortgage lending commissioner, a reference in a statute or rule to the Savings and Loan Department means the Department of Savings and Mortgage Lending, and a reference in a statute or rule to the savings and loan commissioner means the savings and mortgage lending commissioner.

SECTION 3.03. Amends Section 13.008(a), Finance Code, to require the Finance Commission of Texas (finance commission) to establish reasonable and necessary fees for the administration of Chapters 156 and 157. Prohibits the savings and mortgage lending commissioner and the finance commission, in establishing the reasonable and necessary fees for the administration of Chapters 156 and 157, from exceeding the limit on the fees set forth in those chapters.

SECTION 3.04. Amends Section 119.201(a), Finance Code, to authorize the savings and mortgage lending commissioner to require a savings bank that knowingly violates this subtitle or a rule adopted under this subtitle to pay to the Department of Savings and Mortgage Lending, rather than Savings and Loan Department, an administrative penalty not to exceed \$10,000, rather than \$1,000, for each day that the violation occurs after notice of the violation is given by the savings and mortgage lending commissioner.

SECTION 3.05. Requires the savings and mortgage lending commissioner to study the desirability and feasibility of developing alternative thrift charters, including special purpose charters, and to issue a report, including findings and legislative recommendations, to the legislature not later than December 31, 2006.

ARTICLE 4. CONSUMER CREDIT COMMISSIONER

SECTION 4.01. Amends Section 14.208, Finance Code, as follows:

Sec. 14.208. INJUNCTION; APPEAL. (a) Authorizes the commissioner, in certain situations and in addition to any other authorized action, to issue an order to cease and desist, rather than to order a person to refrain, from the violation or an order to take affirmative action, or both, to enforce compliance. Authorizes a person to appeal the order to the finance commission, as provided by Subsection (d), or directly to district court in accordance with Chapter 2001, Government Code.

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

(c) Provides that, if a hearing is not timely requested under Subsection (b), the order is considered final and becomes enforceable. Authorizes the consumer credit commissioner, after giving notice, to impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed \$1,000 for each day of violation. Authorizes the commissioner, in addition to any other remedy provided by law, on relation of the attorney general, to institute in district court a suit for injunctive relief and to collect an administrative penalty. Provides that a bond is not required of the commissioner with respect to injunctive relief granted under this section. Deletes existing text authorizing the commissioner to bring an action in district court.

(d) Requires a party, if the party seeks review of the order by the finance commission, to file a petition for review with the finance commission not later than the 30th day after the date of the issuance of the consumer credit commissioner's decision. Authorizes the finance commission to affirm, vacate, or modify an order issued by the commissioner. Provides that a party aggrieved by a final decision of the finance commission is entitled to judicial review. Authorizes the party to appeal the decision of the finance commission by the filing of a motion for rehearing with the finance commission and then filing a petition initiating judicial review.

SECTION 4.02. Amends the heading to Subchapter F, Chapter 14, Finance Code, to read as follows:

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

SECTION 4.03. Amends Section 14.252(b), Finance Code, to prohibit the aggregate amount of penalties under this subchapter that the commissioner may assess against a person during one calendar year from exceeding the lesser of \$100,000, or an amount that is equal to the greater of five percent of the net worth of the creditor or \$5,000, rather than \$50,000 or \$5,000 for each business location at which an element of a violation occurred.

SECTION 4.04. Amends Section 14.258, Finance Code, as follows:

Sec. 14.258. New heading: STAY OF PENALTY; SUIT BY ATTORNEY GENERAL. Authorizes the enforcement of the penalty to be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. Authorizes a person who cannot afford to pay the penalty or file the bond to stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the consumer credit

commissioner to contest the affidavit as provided by those rules. Authorizes the attorney general to sue to collect the penalty.

SECTION 4.05. Amends Subchapter F, Chapter 14, Finance Code, by adding Sections 14.261-14.264, as follows:

Sec. 14.261. ACCEPTANCE OF ASSURANCE. Authorizes the commissioner, in administering this chapter, to accept assurance of voluntary compliance from a person who is engaging in or has engaged in an act or practice in violation of this chapter or a rule adopted under this chapter, Chapter 394, or Subtitle B, Title 4, or a rule adopted under Subtitle B, Title 4. Requires the assurance to be in writing and be filed with the commissioner. Authorizes the commissioner to condition acceptance of an assurance of voluntary compliance on the stipulation that the person offering the assurance restore to a person in interest money that may have been acquired by the act or practice described by this section. Authorizes the finance commission to adopt rules to establish the form of the assurance or require certain information be contained in an assurance.

Sec. 14.262. EFFECT OF ASSURANCE. Provides that an assurance of voluntary compliance is not an admission of a violation of this chapter or a rule adopted under this chapter, Chapter 394, or Subtitle B, Title 4, or a rule adopted under Subtitle B, Title 4. Provides that, unless an assurance of voluntary compliance is rescinded by agreement or voided by a court for good cause, a subsequent failure to comply with the assurance is prima facie evidence of a violation of this chapter or a rule adopted under this chapter, Chapter 394, or Subtitle B, Title 4, or a rule adopted under Subtitle B, Title 4.

Sec. 14.263. REOPENING. Authorizes a matter closed by the filing of an assurance of voluntary compliance to be reopened at any time.

Sec. 14.264. RIGHT TO BRING ACTION NOT AFFECTED. Provides that an assurance of voluntary compliance does not affect the right of an individual to bring an action, except as provided in Chapter 349 and except that the right of an individual in relation to money received according to a stipulation under Section 14.261(c) is governed by the terms of the assurance. Authorizes a person entering into an assurance of voluntary compliance to, not later than the 60th day after the date of filing of the assurance, correct the violation under Section 349.201. Requires amounts paid as restitution and other acts taken in accordance with an assurance of voluntary compliance to be considered for purposes of determining whether the obligor has made a correction under Subchapter C, Chapter 349. With respect to corrections of violations or possible violations relating to matters addressed in the assurance of voluntary compliance, the date of filing of the assurance is considered to be the date of actual discovery of the violation or possible violation, written notice, and filing of the action alleging the violation.

SECTION 4.06. Amends Section 371.303(b), Finance Code, to delete existing text providing for specific amounts in which the commissioner is authorized to issue an administrative penalty and to authorize the commissioner to issue an administrative penalty in an amount not to exceed \$1,000.

SECTION 4.07. Amends Subchapter B, Chapter 349, Finance Code, by adding Section 349.103, as follows:

Sec. 349.103. LIMITATION ON MULTIPLE RECOVERY OF PENALTIES. Requires an administrative penalty, fine, settlement, or assurance of voluntary compliance under this title or federal law that is assessed by or agreed to with an administrative agency or the attorney general to be considered and applied as a bar or credit to recovery of further fines, penalties, or enhanced damages for substantially the same act, practice, or violation in a suit or other proceeding brought by a private litigant under this title, the Business & Commerce Code, or other applicable law of this state. Provides that this section does not apply to a claim for restitution for unreimbursed actual damages. Provides that a suit or other proceeding by a private litigant does not affect or restrict any state or federal agency from pursuing a person for any administrative remedy, including an administrative penalty. Requires an administrative agency of this state, however, to

consider as a mitigating factor any relief recovered in a private suit or proceeding when the agency determines an administrative remedy.

ARTICLE 5. SAVINGS BANKS AND LIMITED SAVINGS BANKS

SECTION 5.01. Amends Chapter 59, Finance Code, by adding Section 59.011, as follows:

Sec. 59.011. LENDER LIABILITY FOR CONSTRUCTION. Provides that, for purposes of Chapter 27, Property Code, and Title 16, Property Code, a federally insured financial institution regulated under this code is not a builder. Provides that a lender regulated by this code that forecloses on or otherwise acquires a home through the foreclosure process or other legal means when the borrower is in default is not liable to a subsequent purchaser for any construction defects of which the lender had no knowledge that were created prior to the acquisition of the home by the lender. Provides that a builder hired by a lender to complete the construction of a foreclosed home is not liable for any construction defects of which the builder had no knowledge that existed prior to the acquisition of the home by the lender, but the builder is subject to Chapter 27, Property Code, and Title 16, Property Code, for work performed for the lender subsequent to the acquisition of the home by the lender.

SECTION 5.02. Amends Section 91.002, Finance Code, by amending Subdivisions (2) and (18) and adding Subdivision (16-a), to redefine "board" and "member" and to define "limited savings bank."

SECTION 5.03. Amends Section 92.001, Finance Code, as follows:

Sec. 92.001. APPLICABILITY OF OTHER LAW. (a) Provides that, with respect to a savings bank, other than a savings bank organized as a limited savings bank, organized before January 1, 2006, the Texas Business Corporation Act, the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., V.T.C.S.), and other law relating to general business corporations apply to a savings bank to the extent not inconsistent with this subtitle or the proper business of a savings bank.

(b) Provides that, with respect to a savings bank organized as a limited savings bank before January 1, 2006, the Texas Limited Liability Company Act (Article 1528n, V.T.C.S.) and any other law relating to a limited liability company organized in Texas apply to a limited savings bank to the extent not inconsistent with this subtitle or the proper business of a limited savings bank.

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

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

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

SECTION 5.04. Amends Section 92.101, Finance Code, to authorize a person to apply to incorporate a savings bank for the purpose of facilitating a reorganization or merger with or into a savings bank under rules adopted by the finance commission.

SECTION 5.05. Amends Section 92.102, Finance Code, by amending Subsection (d) and adding Subsection (e), as follows:

(d) Provides that Chapter 2001, Government Code, does not apply to the application if the savings bank incorporated under this subchapter does not survive the merger or is facilitating the continuation of an existing savings bank corporate reorganization as defined by rules adopted by the finance commission.

(e) Provides that, if the commissioner considers the financial institution to be reorganized or merged to be in an unsafe condition, the application and all information relating to the application are confidential are not subject to public disclosure.

SECTION 5.06. Amends Section 92.156, Finance Code, by amending Subsections (a) and (c), and adding Subsection (e), as follows:

(a) Deletes existing text requiring a savings bank to maintain a specific blanket indemnity bond on file with the commissioner.

(c) Requires the board of directors of a savings bank or the managers of a savings bank organized as a limited savings bank (board), rather than the board and the commissioner, subject to rules adopted under Subsection (e), to approve the amount and form of the bond and the sufficiency of the surety.

(e) Authorizes the finance commission to adopt rules establishing the amount and form of the bond and the sufficiency of the surety.

SECTION 5.07. Amends Section 92.204, Finance Code, as follows:

Sec. 92.204. New heading: QUALIFIED THRIFT LENDER TEST. Deletes existing text requiring a savings banks to qualify under and continue to meet the asset test of Section 7701(a)(19), Internal Revenue Code of 1986 (26 U.S.C. Section 7701(a)(19). Requires a savings bank to meet certain other requirements. Defines "qualified thrift assets."

SECTION 5.08. Amends Section 92.207, Finance Code, to authorize a savings bank to issue a form of stock, share, account, or investment certificate as permitted for a national bank, federal savings and loan association, federal savings bank, or state bank.

SECTION 5.09. Amends Section 92.208, Finance Code, by amending Subsection (c) and adding Subsection (e), as follows:

(c) Provides an exception to this subsection which allows a savings bank to purchase its own common issued stock under a stock repurchase plan approved in advance by the commissioner.

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

SECTION 5.10. Amends Section 92.211, Finance Code, to prohibit a cash dividend, without the prior approval of the commissioner, from being declared by the board of a savings bank that the commissioner considers to be in an unsafe condition or to have less than zero total retained income on the date of the dividend declaration.

SECTION 5.11. Amends Section 92.252(b), Finance Code, to require the application to convert to be filed in the office of the commissioner not later than the 30th, rather than 10th, day after the date of the meeting.

SECTION 5.12. Amends Section 92.301(b), Finance Code, to make a conforming change.

SECTION 5.13. Amends Sections 92.302(b) and (c), Finance Code, as follows:

(b) Requires the president and secretary of a savings bank to execute two copies of an application for certificate of incorporation as provided by Subchapter B.

(c) Makes a conforming change.

SECTION 5.14. Amends Section 92.351(a), Finance Code, to authorize a savings bank to reorganize, merge, or consolidate with a corporation or another entity under a plan adopted by the board.

SECTION 5.15. Amends Chapter 92, Finance Code, by adding Subchapter M, as follows:

SUBCHAPTER M. LIMITED SAVINGS BANK

Sec. 92.601. APPLICATION TO ORGANIZE. Authorizes five or more adult residents of this state to apply to organize a savings bank as a limited savings bank by submitting a specific application to the commissioner, which includes a filing fee. Sets forth requirements for information to be included in the application.

Sec. 92.602. LIABILITY OF MEMBERS AND MANAGERS. Provides that a member, transferee of a member, or manager of a limited savings bank is not liable for a debt, obligation, or liability of the limited savings bank, including a debt, obligation, or liability under a judgment, decree, or order of a court. Provides that a member or a manager of a limited savings bank is not a proper party to a proceeding by or against a limited savings bank unless the object of the proceeding is to enforce a member's or manager's right against or liability to a limited savings bank.

Sec. 92.603. CONTRIBUTIONS. Provides that a member of a limited savings bank is obligated to make contributions as required in the company agreement.

Sec. 92.604. MANAGERS OF A LIMITED SAVINGS BANK. Requires management of a limited savings bank to be exercised by a board of managers consisting of not fewer than five or more than 21 persons. Requires a manager to meet the qualifications for a director under Section 92.153. Authorizes the governing documents of a limited savings bank may use "director" instead of "manager" and "board" instead of "board of managers."

Sec. 92.605. WITHDRAWAL OR REDUCTION OF MEMBER'S CONTRIBUTION. Prohibits a member from receiving from a limited savings bank any part of the member's contribution except as provided by rule adopted by the finance commission regulating withdrawal or reduction. Prohibits a member from receiving any part of the member's contribution if, after the withdrawal or reduction, the capital of the savings bank would be reduced to less than the minimum capital established for the incorporation or operation of a savings bank by this subtitle or a rule adopted under this subtitle.

Sec. 92.606. COMPANY AGREEMENT OF LIMITED SAVINGS BANK. Requires a limited savings bank to adopt a company agreement that contains provisions regulating the management and organization of the limited savings bank. Provides that the agreement is subject to the approval of the commissioner and must contain provisions the finance commission may require by a rule adopted under this subchapter. Provides that, at the option of the limited savings bank, the term "bylaws" may be substituted for the term "company agreement."

Sec. 92.607. DISSOLUTION. Provides that a limited savings bank organized under this chapter is dissolved on the expiration of the period fixed for the duration of the limited savings bank or the occurrence of events specified in the certificate of formation or company agreement to cause dissolution. Provides that a dissolution under this section is considered a resolution to close the savings bank under Section 96.251.

Sec. 92.608. ALLOCATION OF PROFITS AND LOSSES. Authorizes the profits and losses of a limited savings bank to be allocated among the members and among classes of members as provided by the company agreement. Requires the profits and losses,

without the prior written approval of the commissioner to use a different allocation method, to be allocated according to the relative interests of the members in the limited savings bank.

Sec. 92.609. DISTRIBUTIONS. Authorizes distributions of cash or other assets of a limited savings bank, subject to rules adopted by the finance commission, to be made to the members as provided by the company agreement. Requires the distributions, without the prior written approval of the commissioner to use a different distribution method, to be made to the members according to the relative interests of the members as reflected in the governing documents of the limited savings bank filed with and approved by the commissioner.

Sec. 92.610. AMENDMENT OF GOVERNING DOCUMENTS. Authorizes a limited savings bank to amend its certificate of formation by a majority vote of the members cast at any annual meeting or a special meeting called for that purpose unless the certificate of formation requires a higher percentage. Authorizes the company agreement of a limited savings bank, if provided in the governing documents, to be amended by a majority vote of the board of managers unless the governing documents require a higher percentage. Authorizes the company agreement, in the absence of an express provision in the governing documents, to be amended by a majority vote of the members cast at any annual meeting or special meeting called for that purpose. Prohibits an amendment to the governing documents from taking effect before it is filed with and approved by the commissioner.

Sec. 92.611. APPLICATION OF OTHER PROVISIONS TO LIMITED SAVINGS BANKS; MISCELLANEOUS PROVISIONS. Provides that this subtitle applies to a savings bank organized as a limited savings bank under this subchapter and that, 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. Provides that, for purposes of provisions of this chapter other than this subchapter, as the context requires: a manager is considered to be a director and the board of managers is considered to be the board of directors, a member is considered to be a shareholder, and a distribution is considered to be a dividend. Provides that 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. Defines "governing document."

SECTION 5.16. Amends Section 93.001(c), Finance Code, to authorize a savings bank to pledge its assets to secure deposits of public money of an entity that serves a public purpose according to rules adopted by the finance commission.

SECTION 5.17. Amends Section 93.008, Finance Code, as follows:

(a) Creates this subsection from existing text.

(b) Authorizes a savings bank organized and chartered under this chapter, notwithstanding any other law, to perform an act, own property, or offer a product or service that is at the time permissible within the United States for a depository institution organized under federal law or the law of this state or another state if the commissioner approves the exercise of the power as provided by this section, subject to the same limitations and restrictions applicable to the other depository institution by pertinent law, except to the extent the limitations and restrictions are modified by rules adopted under Subsection (e). Prohibits this section from being used to alter or negate the application of the laws of this state with respect to certain functions.

(c) Requires a savings bank that intends to exercise a power, directly or through a subsidiary, granted by Subsection (b) that is not otherwise authorized for savings banks under the statutes of this state to submit a letter to the commissioner describing in detail the power that the savings bank proposes to exercise and the specific authority of another depository institution to exercise the power. Requires the savings bank to attach copies,

if available, of relevant law, regulations, and interpretive letters. Authorizes the commissioner to deny the bank from exercising the power if the commissioner makes certain findings.

(d) Authorizes a savings bank that is denied the requested power by the commissioner under this section to appeal. Requires the notice of appeal to be in writing and to be received by the commissioner not later than the 30th day after the date of the denial. Provides that an appeal under this section is a contested case under Chapter 2001, Government Code.

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

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

SECTION 5.18. Amends Section 94.201, Finance Code, to require a savings bank to maintain in the savings bank's portfolio not less than 15 percent of the savings bank's deposits from its local services area designated under Section 94.202 in home equity loans and other loans made to customers in the savings bank's local service area that meet the definition of qualified thrift assets under Section 92.204.

SECTION 5.19. Amends Section 96.053(a), Finance Code, to require a savings bank, before March 1, rather than February 1, of each year, to provide a specific written report to the commissioner.

SECTION 5.20. Designates Sections 97.001-97.007, Finance Code, as Subchapter A, Chapter 97, Finance Code, and adds a subchapter heading to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS APPLICABLE TO HOLDING COMPANIES

SECTION 5.21 . Amends Chapter 97, Finance Code, by adding Subchapter B, as follows:

SUBCHAPTER B. MUTUAL HOLDING COMPANIES

Sec. 97.051. REORGANIZATION TO BECOME MUTUAL HOLDING COMPANY. Authorizes a savings bank, notwithstanding any other law, to be reorganized as a mutual holding company by submitting to the commissioner an application for approval of reorganization. Requires an application for reorganization, before submission, to be approved by a majority vote of the members or shareholders of the savings bank cast at an annual meeting or a special meeting called to consider the reorganization.

Sec. 97.052. APPLICATION FOR APPROVAL OF REORGANIZATION. Sets forth requirements for information to be contained in the application for approval of reorganization.

Sec. 97.053. PLAN OF REORGANIZATION. Sets forth specific requirements for the plan of reorganization. Requires the plan of reorganization to set forth the necessary corporate steps for the savings bank to reorganize into a mutual holding company, including certain steps. Authorizes the plan of reorganization to contain any other provision not inconsistent with law or finance commission rules.

ARTICLE 6. AMENDMENTS TO MORTGAGE BROKER LICENSE ACT

SECTION 6.01. Amends Section 156.005, Finance Code, to provide an exception to this section for a prohibition by state law.

SECTION 6.02. Amends Section 156.102(d), Finance Code, to require the finance commission to consult with the savings and loan commissioner, rather than the mortgage broker advisory committee, when proposing and adopting rules under this chapter.

SECTION 6.03. Amends Section 156.104, Finance Code, by amending Subsection (h), and adding Subsections (j) and (k), as follows:

(h) Requires the advisory committee, in addition to other powers and duties delegated to it by the savings and loan commissioner, to advise the savings and loan commissioner, rather than the finance commission and the savings and loan commissioner, in certain situations.

(j) Requires the advisory committee to take a record vote on any matter described by Subsection (h)(1). Requires the savings and loan commissioner to inform the finance commission of certain information.

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

SECTION 6.04. Amends Section 156.201(c), Finance Code, to provide that each mortgage broker licensed under this chapter is responsible to the savings and loan commissioner and members of the public for any act or conduct performed in connection with certain transactions, rather than any act or conduct performed under this chapter.

SECTION 6.05. Amends Section 156.202, Finance Code, to provide that this chapter does not apply to a subsidiary, affiliate, or credit union service organization of a state or federal credit union or a mortgage banker registered under Chapter 157, or an employee of either of those entities, provided the employee is acting for the benefit of the employer.

SECTION 6.06. Amends Section 156.203(d), Finance Code, to prohibit an application fee under this section from being credited or applied to any other fee or indebtedness owed by the person paying the fee.

SECTION 6.07. Reenacts and amends Sections 156.204(a) and (c), Finance Code, as amended by Chapters 170 and 171, Acts of the 78th Legislature, Regular Session, 2003, as follows:

(a) Makes no further changes to this subsection.

(c) Makes nonsubstantive changes to this subsection.

SECTION 6.08. Amends Sections 156.205(a) and (b), Finance Code, to redefine "net assets" and authorize the finance commission to adopt rules establishing the terms and conditions of the surety bond and the qualifications of the surety.

SECTION 6.09. Amends Section 156.208, Finance Code, by amending Subsection (e) and adding Subsection (i), as follows:

(e) Makes a conforming change.

(i) Authorizes the savings and loan commissioner to deny the renewal of a mortgage broker license or loan officer license in certain situations.

SECTION 6.10. Amends Sections 156.2081(c)-(f), as follows:

(c) Prohibits a person whose license has been expired for 91 days or more from renewing the license. Authorizes the person to obtain a new license by complying with the requirements and procedures for obtaining an original license. Deletes existing text providing eligibility requirements for renewal based on the length of time the license has been expired.

(d) Redesignated from existing text of Subsection (e).

(e) Redesignated from existing text of Subsection (f). Requires the savings and loan commissioner, not later than the 60th, rather than 30th, day before the date a person's license is scheduled to expire, to send written notice of the impending expiration to the person at the person's last known address according to the records of the Department of Savings and Mortgage Lending, rather than Savings and Loan Department.

SECTION 6.11. Amends Section 156.209, Finance Code, by amending Subsection (c) and adding Subsections (f) and (g), as follows:

(c) Requires the designated hearings officer to set the time and place for a hearing requested under Subsection (b) not later the 90th, rather than 30th day, after the date on which the appeal is received.

(f) Requires a person who requests a hearing under this section to be required to pay a deposit to secure the payment of the costs of the hearing in an amount to be determined by the savings and loan commissioner not to exceed \$500. Requires the entire deposit to be refunded to the person if the person prevails in the contested case hearing. Provides that, if the person does not prevail, any portion of the deposit in excess of the costs of the hearing assessed against that person shall be refundable.

(g) Provides that a person whose application for a license has been denied is not eligible to be licensed for a period of two years after the date the denial becomes final, or a shorter period determined by the savings and loan commissioner after evaluating the specific circumstances of the person's subsequent application. Authorizes the finance commission to adopt rules to provide conditions for which the savings and loan commissioner may shorten the time of disqualification.

SECTION 6.12. Amends Section 156.211(c), Finance Code, to make a conforming change.

SECTION 6.13. Amends Section 156.301, Finance Code, by adding Subsection (g), to authorize the savings and loan commissioner to share information gathered during an investigation or inspection with any state or federal agency.

SECTION 6.14. Amends Subchapter D, Chapter 156, Finance Code, by adding Section 156.3011, as follows:

Sec. 156.3011. ISSUANCE AND ENFORCEMENT OF SUBPOENA. Authorizes the savings and loan commissioner, during an investigation, to issue a subpoena that is addressed to a peace officer of this state or other person authorized by law to serve citation or perfect service. Provides that the subpoena may require a person to give a deposition, produce documents, or both. Authorizes the savings and loan commissioner, if a person disobeys a subpoena or if a person appearing in a deposition in connection with the investigation refuses to testify, to petition a district court in Travis County to issue an order requiring the person to obey the subpoena, testify, or produce documents relating to the matter. Requires the court to promptly set an application to enforce a subpoena issued under Subsection (a) for hearing and to cause notice of the application and the hearing to be served upon the person to whom the subpoena is directed.

SECTION 6.15. Amends Section 156.303, Finance Code, by amending Subsection (a) and adding Subsections (f)-(i), as follows:

(a) Amends the specific circumstances in which the savings and loan commissioner is authorized to order disciplinary action against a licensed mortgage broker or a licensed loan officer.

(f) Provides that, for purposes of Subsection (a), a person is considered convicted if a sentence is imposed on the person, the person receives community supervision, including deferred adjudication community supervision, or the court defers final disposition of the person's case.

(g) Authorizes the savings and loan commissioner, if a person fails to pay an administrative penalty that has become final or fails to comply with an order of the commissioner that has become final, in addition to any other remedy provided under law on not less than 10 days' notice to the person, to, without a prior hearing, suspend the person's mortgage broker license or loan officer license. Requires the suspension to continue until the person has complied with the cease and desist order or paid the administrative penalty. Prohibits the person, during the period of suspension, from originating a mortgage loan and provides that all compensation received by the person during the period of suspension is subject to forfeiture as provided by Section 156.406(b).

(h) Authorizes an order of suspension under Subsection (g) to be appealed. Provides that an appeal is a contested case governed by Chapter 2001, Government Code. Requires a hearing of an appeal of an order of suspension issued under Subsection (g) to be held not later than the 15th day after the date of receipt of the notice of appeal. Requires the appellant to be provided at least three days' notice of the time and place of the hearing.

(i) Authorizes an order revoking the license of a mortgage broker or loan officer to provide that the person is prohibited, without obtaining prior written consent of the commissioner, from engaging in the business of originating or making mortgage loans, being an employee, officer, director, manager, shareholder, member, agent, contractor, or processor of a mortgage broker or loan officer, or otherwise affiliating with a person for the purpose of engaging in the business of originating or making mortgage loans.

SECTION 6.16. Amends Subchapter D, Chapter 156, Finance Code, by adding Section 156.305, as follows:

Sec. 156.305. RESTITUTION. Authorizes the savings and loan commissioner to order a person to make restitution for any amount received by that person in violation of this chapter. Authorizes a mortgage broker to be required to make restitution for any amount received by a sponsored loan officer in violation of this chapter.

SECTION 6.17. Amends Section 156.406(c), Finance Code, to authorize the order to assess an administrative penalty in an amount not to exceed \$1,000 per day for each violation and to require a person to pay a mortgage applicant any compensation received by the person from the applicant in violation of this chapter. Provides that an order under this subsection becomes final unless the person to whom the order is issued requests a hearing not later than the 30th day after the date the order is issued. Deletes existing text authorizing the savings and loan commissioner to find that a violation has or has not occurred.

SECTION 6.18. Amends Section 156.501(b), Finance Code, to prohibit payments from the fund from being made to a lender who makes a mortgage loan originated by the mortgage broker or loan officer or who acquires a mortgage loan originated by the mortgage broker or loan officer.

ARTICLE 7. MISCELLANEOUS PROVISIONS

SECTION 7.01. Amends Section 304.003(c), Finance Code, to amend the existing guidelines for determining the postjudgment interest rate.

SECTION 7.02. Requires the Finance Commission of Texas and the Credit Union Commission, not later than December 31, 2006, to compare state laws related to financial institutions with applicable federal laws, determine which state laws may be preempted by federal law, rule, or order, determine which state laws may be invalidated by state or federal court ruling, and report their findings to the legislature, with recommended statutory changes.

SECTION 7.03. Repealer: Sections 96.052 (Statement of Financial Condition), 345.151 (Affidavit of Rate Charged by Creditor in Other State for Determining Ceiling), 345.152 (Determination of Ceiling), and 345.154 (Implementation of Ceiling), Finance Code, and Sections 2153.103 (Information from Examination), 2153.251 (Rulemaking Authority of Commissioner), 2153.253 (Notification Required), 2153.256 (Examination; Scope), 2153.257

(Fees and Expenses), and 2153.258(b) (Criminal Offense; Violation of Subchapter), Occupations Code.

ARTICLE 8. EFFECTIVE DATE

SECTION 8.01. Effective date: September 1, 2005, except as provided by Section 8.02 of this article.

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